
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1971 Session of
2015

INTRODUCED BY DAVIS, ROZZI, GALLOWAY, READSHAW, V. BROWN,
SCHREIBER, D. COSTA, COHEN, YOUNGBLOOD, McNEILL, SCHWEYER,
PASHINSKI, DeLUCA, O'BRIEN, DRISCOLL, DAVIDSON AND FARINA,
APRIL 8, 2016

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 8, 2016

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child custody, adding provisions
3 relating to domestic violence cases; and making an editorial
4 change.

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

7 Section 1. Chapter 53 of Title 23 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subchapter heading
9 immediately before section 5321 to read:

10 SUBCHAPTER A

11 GENERAL PROVISIONS

12 Section 2. Chapter 53 is amended by adding a subchapter to
13 read:

14 SUBCHAPTER B

15 DOMESTIC VIOLENCE CASES

16 Sec.

17 5351. Findings.

18 5352. Intent.

- 1 5353. Definitions.
- 2 5354. Domestic violence experts.
- 3 5355. Mental health evaluators.
- 4 5356. Information in domestic violence cases.
- 5 5357. Evidentiary hearing.
- 6 5358. Child sexual abuse.
- 7 5359. Award of custody.
- 8 5360. Prohibited actions of court.
- 9 5361. Training and retraining.
- 10 5362. Modification of existing order.
- 11 § 5351. Findings.

12 The General Assembly finds and declares as follows:

13 (1) Domestic violence is a pattern of coercive and
14 controlling tactics by one partner against another in an
15 intimate partner relationship designed to maintain control
16 over the partner and make the major decisions in the
17 relationship.

18 (2) These tactics are intended to induce fear in the
19 partner.

20 (3) Although abusers often use physical violence as one
21 of the tactics, not all abusers engage in physical violence
22 and most tactics are not physical and not illegal.

23 (4) Common tactics include verbal, emotional,
24 psychological and economic abuse, isolating tactics, threats,
25 including threats to seek custody if the victim leaves,
26 controlling behaviors, monitoring, litigation abuse, and,
27 especially, demands for custody or joint custody in order to
28 pressure the partner to return or punish the partner for
29 leaving.

30 (5) The health and safety of children must be the first

1 priority in all decisions concerning child custody and
2 visitation.

3 (6) In child custody proceedings in which there are
4 allegations of domestic violence, expertise in domestic
5 violence is required to determine if the allegations are
6 valid.

7 (7) Promoting safety of children includes both
8 preventing direct assault of children and creating situations
9 that may decrease the likelihood children will engage in
10 harmful behaviors.

11 (8) Common examples of situations that create a safety
12 risk for children include:

13 (i) Separating children from their primary
14 attachment figure, which has been shown to increase the
15 risk of children to suffer from depression or low self-
16 esteem, or to commit suicide when older.

17 (ii) Witnessing domestic violence, which has been
18 shown to interfere with the ability of children to reach
19 developmental milestones and increase the likelihood the
20 children will engage in a wide range of harmful behaviors
21 when older.

22 (9) Additional State funding may be necessary to meet
23 the needs to train judges and other court professionals in
24 the handling of child custody proceedings in which one or
25 more parties have alleged domestic violence or child sexual
26 abuse.

27 § 5352. Intent.

28 It is the intent of the General Assembly:

29 (1) To correct common practices that have been shown to
30 work poorly for children.

1 (2) To encourage custody court professionals to utilize
2 current, valid, scientific research in making decisions.

3 § 5353. Definitions.

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

7 "Department." The Department of Human Services of the
8 Commonwealth.

9 "Domestic violence case." A child custody proceeding in
10 which exists:

11 (1) an allegation of domestic violence; or

12 (2) evidence or information that supports the
13 possibility that one or both parties engaged in domestic
14 violence tactics.

15 § 5354. Domestic violence experts.

16 (a) General rule.--A professional who provides advice or
17 recommendations to the court in a domestic violence case must
18 have substantial expertise about subjects necessary to
19 understand safety issues, including, but not limited to:

20 (1) Behaviors that are associated with higher risk of
21 injury or death.

22 (2) Domestic violence dynamics.

23 (3) The effect of domestic violence on children.

24 (4) Recognition of domestic violence.

25 (5) Research regarding batterer narratives.

26 (b) When consultation with professional required.--A
27 professional who provides advice or recommendations to the court
28 who does not have the expertise described in subsection (a)
29 shall consult with a professional who has the expertise
30 described in subsection (a).

1 (c) Educational degrees.--

2 (1) A degree in psychology, psychiatry or social work
3 shall not constitute proof that a professional has
4 substantial domestic violence expertise or the expertise
5 described in subsection (a).

6 (2) A person without a degree in psychology, psychiatry
7 or social work shall be permitted to provide advice or
8 recommendations to the court or to act as a domestic violence
9 expert or a witness, if the person demonstrates domestic
10 violence expertise based on training and experience.

11 (d) Appointment of domestic violence experts.--The court may
12 appoint a domestic violence expert to help the court understand
13 the significance of evidence related to domestic violence.

14 (e) Evidence.--The court shall permit a party to a domestic
15 violence case to present evidence from a domestic violence
16 expert if the expert is qualified as described in this section.
17 § 5355. Mental health evaluators.

18 (a) General rule.--The court may not appoint a mental health
19 evaluator in a domestic violence case if there is no substantial
20 basis to believe the parties or children have a significant
21 mental health impairment.

22 (b) When appointment permissible.--The court may appoint a
23 mental health evaluator in a domestic violence case if:

24 (1) One or more parties to or any children involved in
25 the domestic violence case have a significant mental health
26 impairment.

27 (2) The mental health evaluator demonstrates clear
28 expertise in domestic violence and child abuse matters.

29 § 5356. Information in domestic violence cases.

30 A judge hearing domestic violence cases shall:

1 (1) Utilize current, valid scientific research that is
2 recognized by reputable professional organizations and
3 government offices regarding domestic violence to reach a
4 decision.

5 (2) Avoid theories regarding domestic violence that have
6 been rejected by reputable professional organizations and
7 government offices. Such theories include, but are not
8 limited to:

9 (i) The belief that sexual intercourse between
10 children and adults can be acceptable.

11 (ii) The assumption that women or children
12 frequently make false allegations of abuse.

13 § 5357. Evidentiary hearing.

14 (a) General rule.--Before the court may appoint counsel to
15 represent a child, an evaluator or any other professional, the
16 court shall conduct an evidentiary hearing to determine if a
17 party to the proceeding has engaged in a pattern of domestic
18 violence tactics.

19 (b) When evidence may be considered.--If the court does not
20 make a finding that a party to the proceeding has engaged in a
21 pattern of domestic violence tactics, the court may not refuse
22 to consider additional evidence of domestic violence presented
23 later in the case.

24 (c) Applicability.--This section shall apply to a child
25 custody proceeding in which any of the following are present:

26 (1) An allegation of domestic violence.

27 (2) A history between the parties to the proceeding that
28 includes restraining orders.

29 (3) Criminal charges.

30 (4) Any other evidence of domestic violence.

1 § 5358. Child sexual abuse.

2 In a child custody proceeding involving an allegation of
3 child sexual abuse:

4 (1) A professional conducting a risk assessment or
5 evaluation at the request of the court must have significant
6 experience working with children and expertise in child
7 sexual abuse.

8 (2) A professional as described in paragraph (1) shall
9 develop a trusting relationship with the child before
10 expecting the child to speak about allegations of child
11 sexual abuse.

12 (3) A recantation of child sexual abuse allegations by
13 the child shall not by itself be treated as proof the
14 allegations are untrue.

15 (4) If an attorney for the Commonwealth, the department
16 or a child protective services agency decides not to file
17 charges against the alleged perpetrator of child sexual
18 abuse, the decision shall not by itself be treated as proof
19 the allegations of child sexual abuse are untrue.

20 (5) Before making a finding that allegations of child
21 sexual abuse were deliberately false, the court shall
22 consider:

23 (i) Whether there is sufficient information to
24 determine the validity of the allegations.

25 (ii) Whether the allegations were made by mistake in
26 good faith.

27 (6) If the court makes a finding that allegations of
28 child sexual abuse were deliberately false in accordance with
29 this section, the court shall consider new evidence in the
30 context of the evidence previously presented.

1 § 5359. Award of custody.

2 (a) General rule.--If the court determines by a
3 preponderance of the evidence that one party to a domestic
4 violence case engaged in domestic violence tactics, the court
5 shall:

6 (1) Award sole custody to the other party, unless the
7 court finds that making such an award would risk the health
8 and safety of the child.

9 (2) Initially award supervised physical custody to the
10 abusive party. The court may award partial physical custody
11 to the abusive party if the person:

12 (i) Completes an accountability program, the
13 duration of which shall be at least six months.

14 (ii) Accepts full responsibility for past abuse.

15 (iii) Commits to never abusing the child, the abused
16 party and future partners.

17 (iv) Demonstrates an understanding of the harm
18 caused by abuse.

19 (v) Proves to the court that the benefit of an award
20 of partial physical custody outweighs the risk.

21 (b) Joint custody.--

22 (1) The court may not award joint custody in a child
23 custody proceeding if there is an allegation or evidence of
24 domestic violence or child abuse.

25 (2) The court may not award joint custody unless both
26 parties freely consent to the award of joint custody.

27 (c) Termination of order.--If the court makes an award of
28 custody to the abusive party and the court finds that the
29 abusive party has committed further abuse, the court shall
30 terminate the abusive party's order of custody.

1 § 5360. Prohibited actions of court.

2 In a domestic violence case or a child custody proceeding in
3 which there are allegations of child abuse, the court may not:

4 (1) take adverse action in an award of custody against a
5 party who makes a good faith allegation of child abuse or
6 domestic violence; or

7 (2) use approaches designed for high conflict child
8 custody proceedings commonly used to encourage parties to
9 cooperate.

10 § 5361. Training and retraining.

11 (a) General rule.--The following court professionals shall
12 receive training under this subchapter:

13 (1) A judge who hears child custody cases involving
14 domestic violence or child sexual abuse.

15 (2) An attorney appointed to represent children in child
16 custody cases involving domestic violence or child sexual
17 abuse.

18 (b) Contents of training.--Training shall include the
19 following:

20 (1) Compliance with the practices under this subchapter.

21 (2) Current scientific research in domestic violence and
22 child sexual abuse.

23 (3) Retraining regarding prior standard practices that
24 have been shown to work poorly for children.

25 (c) Conduct of training.--Training shall be conducted by
26 domestic violence advocates or other experts knowledgeable about
27 the safety practices and scientific research described in this
28 subchapter.

29 § 5362. Modification of existing order.

30 A party to a child custody proceeding in which:

1 (1) domestic violence or child sexual abuse was alleged;
2 and
3 (2) an order of custody was issued prior to the
4 effective date of this section,
5 may petition the court to modify the order of custody to serve
6 the best interests of the child in accordance with this
7 subchapter.

8 Section 2. This act shall take effect in 90 days.