

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 78

**PRINTER NO.** 930

**AMOUNT**

See Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

January 22, 2021

**PRIME SPONSOR**

Senator Baker

**DESCRIPTION AND PURPOSE OF BILL**

Senate Bill 78 amends Title 23 (Domestic Relations) and Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to revise procedures relating to child custody matters and provide for child abuse and domestic abuse education and training programs for judges and court personnel, respectively.

The legislation, referred to as Kayden’s Law, is intended to ensure that in all cases and controversies before the courts involving questions of child custody, the health, safety and welfare of the child are protected and regarded as issues of paramount importance.

**Title 23**

Senate Bill 78 amends the existing definition of “abuse” in section 5322(a) of Title 23 to include the crime of stalking pursuant to 18 Pa.C.S. § 2709.1 (relating to stalking). In addition, the definition of “abuse” is amended such that the term does not include the justified use of force in self-protection or for the protection of other persons in accordance with 18 Pa.C.S. Ch. 5 (relating to general principles of justification) § 505 (relating to use of force in self-protection) by a party in response to abuse or domestic violence abuse by the other party.

The legislation amends Chapter 53 (Child Custody) by adding the following terms to section 5322(a):

- "Health and safety of the child." The term includes, but is not limited to, the physical, emotional and psychological health, safety and well-being of the child.
- "Nonprofessional supervised physical custody." Custodial time during which an agency or an adult, who is not a licensed professional designated by the court or agreed upon by the parties, monitors the interaction between the child and the individual with those rights.
- "Professional supervised physical custody." Custodial time during which a licensed professional monitors the interaction between the child and the individual with those custody rights and promotes the child's health and safety during the interaction.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

Senate Bill 78 amends section 5323 (relating to award of custody) in subsection (e) by expanding the factors to consider in awarding custody to include all factors in existing section 5328(a) instead of a subset of those factors, section 5329 (relating to consideration of criminal conviction), section 5329.1 (relating to consideration of child abuse and involvement with protective services), and section 5330 (relating to consideration of criminal charge). The legislation further amends section 5323(e) regarding safety conditions to strengthen the current standard of "if the court finds that there is an ongoing risk of harm to the child" to a standard of "if the court finds a history of abuse of the child or a household member by a party or risk of harm to the child."

In addition, the legislation amends section 5323(e) by providing that the court shall include in a custody order safety conditions, restrictions or safeguards as necessary to protect the child or the abused party and enumerates the following specific safety conditions, restrictions or safeguards that may be included by the court in a custody order:

1. Nonprofessional supervised physical custody;
2. Professional supervised physical custody;
3. Limitations on the time of day that physical custody is permitted or on the number of hours of physical custody and the maximum number of hours of physical custody permitted per day or per week;
4. Appoint a qualified professional specializing in treatment relating to the history of abuse or risk of harm to provide counseling. Counseling may include a program of treatment or individual therapy designed to rehabilitate the offending individual, which includes issues regarding physical or sexual abuse, domestic abuse, the psychology of the offender and the effects of abuse on the victim and the child. If counseling is ordered, the court may require an evaluation by the appointed qualified professional to determine whether further counseling of the offender is necessary;
5. Limitations on legal custody; and
6. Any other safety condition, restriction, or safeguard as necessary to ensure the health and safety of the child.

Furthermore, Senate Bill 78 amends section 5323 (relating to award of custody) by adding the following subsections:

- (e.1) Supervision.--If a court finds by a preponderance of the evidence that a party has subjected the child or any household member to abuse, the court shall be presumed to only allow nonprofessional supervised physical custody or professional supervised physical custody between the child and the party who committed the abuse unless the court makes a finding on the record that it finds by a preponderance of the evidence that the party no longer poses a risk of abuse to the child or any other household member and that another custody arrangement is in the best interest of the child and will not cause physical, emotional or psychological harm to the child.

## **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

- (e.2) Professional supervision.--If a court finds by a preponderance of the evidence that there is an ongoing risk of abuse of the child, the court shall be presumed to only allow professional supervised physical custody between the child and the party who committed the abuse unless the court makes a finding on the record that it finds by a preponderance of the evidence that the party no longer poses a risk of abuse to the child or any other household member and that another custody arrangement is in the best interest of the child and will not cause physical, emotional or psychological harm to the child.

The legislation amends section 5328 (relating to factors to consider when awarding custody) in subsection (a) to make the factors consistent with the intent of the bill to ensure that the health and safety of the child are protected. Such factors to be considered are updated and expanded to include violent or assaultive behavior committed by a party, including past or current protection from abuse and sexual violence abuse protection orders, and which party is more likely to encourage and permit frequent and continuing contact between the child and another party if contact is consistent with the health and safety needs of the child. Also, the factors to consider when awarding custody are updated to specify that a party's reasonable concerns and efforts to protect a child's health and welfare shall not be considered attempts to turn the child against the other party.

Senate Bill 78 amends section 5328 (relating to factors to consider when awarding custody) by adding new subsection (a.1), which provides an exception such that the factors to consider when awarding custody under subsection (a) shall not be adversely weighed against a party if that party or the child was subjected to abuse by the other party.

Under current law, section 5329 (relating to consideration of criminal conviction) contains an extensive list of criminal offenses that the court shall consider in order to determine that a party seeking custody does not pose a threat of harm to the child before making any order of custody. Senate Bill 78 expands the list of criminal offenses to be considered to include the following:

- 18 Pa.C.S. § 2701 (relating to simple assault);
- 18 Pa.C.S. § 2705 (relating to recklessly endangering another person);
- 18 Pa.C.S. § 2718 (relating to strangulation);
- 18 Pa.C.S. § 3011 (relating to trafficking in individuals);
- 18 Pa.C.S. § 3012 (relating to involuntary servitude);
- 18 Pa.C.S. § 3013 (relating to patronizing a victim of sexual servitude);
- 18 Pa.C.S. § 5533 (relating to cruelty to animal);
- 18 Pa.C.S. § 5534 (relating to aggravated cruelty to animal);
- 18 Pa.C.S. § 5543 (relating to animal fighting); and
- 18 Pa.C.S. § 5544 (relating to possession of animal fighting paraphernalia).

# **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

Senate Bill 78 amends section 5334 (relating to guardian ad litem for child) in subsection (c) to provide the court with discretion to appoint a guardian ad litem for the child instead of a mandate to appoint a guardian. In addition, the legislation requires a guardian ad litem to establish that he or she received education and training under the program specified in newly established 42 Pa.C.S. § 1908 (relating to child abuse and domestic violence abuse education and training program for judges and court personnel) or substantially similar training prior to appointment.

The legislation amends section 5339 (relating to award of counsel fees, costs and expenses) so that such fees, costs and expenses may not apply to a party if that party engaged the judicial process in good faith to protect the child from harm. In addition, Senate Bill 78 adds a new subsection 5339(b), which authorizes the court to direct that a party who has been found to have perpetrated abuse to pay all or a portion of the fees, costs and expenses incurred by the other party.

## **Title 42**

Senate Bill 78 amends Title 42 by adding a new section 1908 (relating to child abuse and domestic abuse education and training program for judges and court personnel). Section 1908 authorizes the Administrative Office of Pennsylvania Courts (AOPC) to develop and implement an ongoing education and training program for judges, magisterial district judges and relevant court personnel regarding child abuse. Such programs shall include all aspects of maltreatment, including sexual abuse, physical abuse, emotional abuse, implicit and explicit bias, trauma and neglect, and the impact of child abuse and domestic violence on children.

The education and training program shall include the latest best practices from evidence-based and peer-reviewed research by recognized experts in the types of abuse designated under this section. The education and training program shall be designed to improve the ability of courts to recognize and respond to the impact of child abuse, domestic violence abuse and trauma on all victims, specifically children, and to make appropriate custody decisions that are in the best interest of the child.

This legislation shall take effect in 60 days.

## **FISCAL IMPACT:**

According to the Administrative Office of Pennsylvania Courts (AOPC), education and training are currently provided for, and specifically tailored for, magisterial district judges and judges of the courts of common pleas. A separate, custom-tailored educational program would need to be developed for guardians ad litem, appointed counsel for children and masters and mediators.

It is assumed that a webinar and/or internet-based instructional program would be developed, and the costs for such development would be minimal and capable of being accommodated within existing staffing and funding levels for the Judiciary.