

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 55

**PRINTER NO.** 1169

**AMOUNT**

No Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

October 11, 2023

**PRIME SPONSOR**

Senator Santarsiero

**DESCRIPTION**

Senate Bill 55 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 55 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):

- "Household member." A spouse or an individual who has been a spouse, an individual living as a spouse or who lived as a spouse, a parent or child, another individual related by consanguinity or affinity, a current or former sexual or intimate partner, an individual who shares biological parenthood or any other person, who is currently sharing a household with the child or a party;
- "Nonprofessional supervised physical custody." Custodial time during which an adult, 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 professional, with education and training on the dynamics of domestic violence, sexual assault, child abuse, trauma and the impact of domestic violence on children, oversees the interaction between the child and the

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- individual with those custody rights and promotes the safety of the child during the interaction;
- "Safety of the child." The term includes, but is not limited to, the physical, emotional and psychological well-being of the child; and
- "Temporary housing instability." A period not to exceed six months from the date of the last incident of abuse as determined by the court.

Senate Bill 55 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 a present 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. Appointment of a qualified professional specializing in programming relating to the history of abuse or risk of harm to provide batterer's intervention and harm prevention programming;
5. Limitations on legal custody; and
6. Any other safety condition, restriction, or safeguard as necessary to ensure the safety of the child or to protect a household member.

Furthermore, Senate Bill 55 amends section 5323 (relating to award of custody) by adding the following new subsection:

- (e.1) Supervised physical custody. --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 supervised physical custody between the child and the party who poses the risk of abuse. The court shall favor professional supervised physical custody, although the court may award nonprofessional supervised custody if:

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- 1) The court determines that professional supervised physical custody is not available within a reasonable distance of the parties, or the court determines that the party requiring supervised physical custody is unable to pay for the professional supervised physical custody; and
- 2) The court designates an adult to supervise the custodial visits who has appeared in person before the court, the individual executes an affidavit of accountability and the court makes finding, on the record, that the individual is capable of promoting the safety of 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 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 safety needs of the child.

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 55 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. § 2904 (relating to interference with custody of children);
- 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 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 court shall make reasonable efforts to appoint a guardian ad litem who received evidence-based education and training relating to child abuse, including child sexual abuse, domestic abuse education and the effect of child sexual abuse and domestic abuse on children.

### **Title 42**

Senate Bill 55 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

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of child abuse and domestic violence on children, including all of the following:

- 1) Sexual abuse;
- 2) Physical abuse;
- 3) Psychological and emotional abuse;
- 4) Implicit and explicit bias;
- 5) Trauma and neglect; and
- 6) 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 make appropriate custody decisions that are in the best interest of the child.

This legislation shall take effect in 120 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.