

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2141

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SPITZ, R. C. WRIGHT AND HOFFEL, DECEMBER 15, 1981

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 4, 1982

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, adding provisions relating to domestic
3 relations, making conforming amendments to Title 42 and
4 repealing certain acts and parts of acts supplied by the act
5 or otherwise obsolete.

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22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Part IX of Title 23, act of November 25, 1970
25 (P.L.707, No.230), known as the Pennsylvania Consolidated
26 Statutes, is repealed.

27 Section 2. Title 23 is amended by adding parts to read:

28 TITLE 23

29 DOMESTIC RELATIONS

30 Part

1 I. General Provisions
2 II. Marriage
3 IV. Divorce
4 VI. Children and Minors
5 VII. Abuse of Family

6 PART I
7 GENERAL PROVISIONS

8 Chapter

9 1. Preliminary Provisions

10 CHAPTER 1

11 PRELIMINARY PROVISIONS

12 Sec.

13 101. Short title of title.

14 102. Definitions.

15 § 101. Short title of title.

16 This title shall be known and may be cited as the "Domestic
17 Relations Code."

18 § 102. Definitions.

19 (a) General rule.--Subject to additional definitions
20 contained in subsequent provisions of this title which are
21 applicable to specific provisions of this title, the following
22 words and phrases when used in this title shall have the
23 meanings given to them in this subsection unless the context
24 clearly indicates otherwise:

25 "Clerk of court" or "clerk." The personnel of the office of
26 the prothonotary or clerk of the division of the court having
27 jurisdiction over the matter.

28 "Court." The court or district justice having jurisdiction
29 over the matter under Title 42 (relating to judiciary and
30 judicial procedure) exercised as provided in Title 42 or as

1 otherwise provided or prescribed by law.

2 (b) Title 42 definitions.--Subject to additional definitions
3 contained in subsequent provisions of this title which are
4 applicable to specific provisions of this title, words and
5 phrases not defined in subsection (a) which are defined in 42
6 Pa.C.S. § 102 (relating to definitions) when used in this title
7 shall have the meanings given to them in Title 42 unless the
8 context clearly indicates otherwise.

9 PART II

10 MARRIAGE

11 Chapter

12 11. Preliminary Provisions

13 13. Marriage License

14 15. Marriage Ceremony

15 17. Miscellaneous Provisions Relating to Marriage

16 19. Abolition of Actions for Alienation of Affections and
17 Breach of Promise to Marry

18 CHAPTER 11

19 PRELIMINARY PROVISIONS

20 Sec.

21 1101. Short title of part.

22 1102. Definitions.

23 1103. Common law marriage.

24 1104. Forms.

25 1105. Fees.

26 1106. Records and statistics.

27 § 1101. Short title of part.

28 This part shall be known and may be cited as the "Marriage
29 Law."

30 § 1102. Definitions.

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

4 "Department." The Department of Health of the Commonwealth.

5 "Marriage license" or "license." A license to marry issued
6 under this part.

7 § 1103. Common law marriage.

8 This part shall not be construed to change the existing law
9 with regard to common law marriage.

10 § 1104. Forms.

11 Marriage license applications, consent certificates, marriage
12 licenses and other necessary forms shall be supplied at the
13 expense of the county and shall be uniform throughout this
14 Commonwealth as prescribed by the department. Statements of
15 physicians and laboratories relative to examinations for
16 syphilis shall be prepared and furnished by the department.

17 § 1105. Fees.

18 (a) General rule.--The fee to be charged for issuing a
19 marriage license or declaration and for returns thereof to the
20 department shall be \$3 of which \$2.50 shall be retained by the
21 county wherein the license is issued and 50¢ shall be remitted
22 to the Commonwealth.

23 (b) Transmitting Commonwealth moneys.--All moneys collected
24 under this section for the Commonwealth shall be transmitted to
25 the State Treasurer no later than the tenth day of the following
26 month.

27 § 1106. Records and statistics.

28 (a) Filing transcript or record.--The county shall furnish
29 the department, not later than the 15th day of each month, with
30 a transcript or record of each marriage license issued and each

1 return of the celebration of a marriage received or filed during
2 the preceding calendar month.

3 (b) Forms.--The transcripts or records required to be
4 furnished shall be made on forms prepared and furnished by the
5 department and shall contain such information as the department
6 may require.

7 (c) Confidentiality.--The records furnished to the
8 department under this section shall not be open to public
9 inspection except as authorized by the regulations of the
10 Advisory Health Board.

11 (d) Statistics.--The department shall from time to time
12 compile and publish statistics derived from records furnished
13 under this section.

14 CHAPTER 13

15 MARRIAGE LICENSE

16 Sec.

17 1301. Marriage license required.

18 1302. Application for license.

19 1303. Waiting period after application.

20 1304. Restrictions on issuance of license.

21 1305. Examination and tests for syphilis.

22 1306. Oral examination.

23 1307. Issuance of license.

24 1308. Judicial review of refusal to issue license.

25 1309. Filing applications and consent certificates.

26 1310. Duration and form of license.

27 § 1301. Marriage license required.

28 (a) General rule.--No person shall be joined in marriage in
29 this Commonwealth until a marriage license has been obtained.

30 (b) Place of marriage ceremony.--A license issued under this

1 part shall authorize a marriage ceremony to be performed in any
2 county of this Commonwealth.

3 (c) Identity of applicants.--Prior to issuance of the
4 license, the person issuing the license must be satisfied as to
5 the identity of both of the applicants.

6 § 1302. Application for license.

7 (a) General rule.--No marriage license shall be issued
8 except upon written and verified application made by both of the
9 parties intending to marry.

10 (b) Contents.--The application shall contain the following:

11 (1) The full name of the applicants.

12 (2) The race, occupation, birthplace, residence and age
13 of the applicants.

14 (3) Whether the marriage contemplated is the first,
15 second or other marriage of an applicant.

16 (4) A statement that neither of the applicants is
17 afflicted with transmissible disease.

18 (5) The full name, residence, race, occupation and
19 birthplace of the parents of each applicant, including the
20 maiden name of the mother of each applicant.

21 (6) Any other facts necessary to determine whether a
22 legal impediment to the proposed marriage exists.

23 § 1303. Waiting period after application.

24 (a) General rule.--No marriage license shall be issued prior
25 to the third day following the making of application therefor.

26 (b) Exception.--In case of emergency or extraordinary
27 circumstances, the court may authorize a license to be issued at
28 any time after the making of the application.

29 § 1304. Restrictions on issuance of license.

30 (a) Examinations and tests for syphilis.--No marriage

1 license shall be issued until there has been compliance with
2 section 1305 (relating to examination and tests for syphilis).

3 (b) Minors.--

4 (1) No marriage license may be issued if either of the
5 applicants for a license is under 16 years of age unless the
6 court decides that it is to the best interest of the
7 applicant and authorizes the issuance of the license.

8 (2) No marriage license may be issued if either of the
9 applicants is under 18 years of age unless the consent of a
10 parent or guardian of the applicant is personally given
11 before the person issuing the license or is certified under
12 the hand of a parent or guardian attested by two adult
13 witnesses and, in the latter case, the signature of the
14 parent or guardian is acknowledged before an officer
15 authorized by law to take acknowledgments. When the minor has
16 no guardian and a judge of the court is absent or not
17 accessible for any reason, the office issuing the license may
18 appoint a guardian pro hac vice for the minor.

19 (c) Incompetent persons.--No marriage license may be issued
20 if either of the applicants for a license is weak-minded,
21 insane, of unsound mind or is under guardianship as a person of
22 unsound mind unless the court decides that it is for the best
23 interest of the applicant and the general public to issue the
24 license and authorizes the issuance of the license.

25 (d) Persons under influence of alcohol or drugs.--No
26 marriage license may be issued if, at the time of making
27 application, either of the applicants is under the influence of
28 alcohol or drugs.

29 (e) Marriage to relatives.--No marriage license may be
30 issued to applicants within the prohibited degrees of

1 consanguinity which are as follows:

2 A man may not marry his mother.

3 A man may not marry the sister of his father.

4 A man may not marry the sister of his mother.

5 A man may not marry his sister.

6 A man may not marry his daughter.

7 A man may not marry the daughter of his son or daughter.

8 A woman may not marry her father.

9 A woman may not marry the brother of her father.

10 A woman may not marry the brother of her mother.

11 A woman may not marry her brother.

12 A woman may not marry her son.

13 A woman may not marry the son of her son or daughter.

14 § 1305. Examination and tests for syphilis.

15 (a) General rule.--No marriage license may be issued until
16 there has been filed a statement or statements, signed by a
17 licensed physician of this Commonwealth or of any other state or
18 territory, a commissioned medical officer in the armed forces of
19 the United States or a physician of the Public Health Service of
20 the Federal Government, that each applicant within 30 days of
21 the issuance of the marriage license has submitted to an
22 examination to determine the existence or nonexistence of
23 syphilis, which examination has included a standard serological
24 test or tests for syphilis, and that, in the opinion of the
25 examining physician, the applicant is not infected with syphilis
26 or, if so infected, is not in a stage of that disease which is
27 likely to become communicable. The statement of the physician
28 shall be accompanied by a statement from the person in charge of
29 the laboratory making the test or from some other person
30 authorized to make the statement setting forth the name of the

1 test, the date the test was made, the exact name and address of
2 the physician to whom a report was sent and the exact name and
3 address of the person whose blood was tested and any other facts
4 the department deems necessary to determine whether the
5 applicant is infected with syphilis in a stage of that disease
6 likely to become communicable. The statement from the laboratory
7 shall not set forth the result of the test.

8 (b) Authorization and payment.--For the purpose of this
9 section, a standard serological test for syphilis shall be a
10 test approved by the department and shall be made at a
11 laboratory approved by the department to make such tests.
12 Laboratory tests required to be made by this section shall, upon
13 request of the physician submitting the sample and certification
14 of the physician that the applicant is unable to pay, be made
15 without charge by the department.

16 (c) Administrative review of denial of statement.--Any
17 applicant for a marriage license having been denied a
18 physician's statement as required by this section shall have the
19 right of appeal to the department for a review of the case and
20 the department shall, after appropriate investigation, issue or
21 refuse to issue a statement in lieu of the physician's statement
22 required by subsection (a).

23 (d) Forms and confidentiality.--The statements of the
24 physician who examined the applicant and the laboratory which
25 made the serological test shall be uniform throughout this
26 Commonwealth and shall be upon forms provided by the department.
27 These forms shall be filed separately from the applications for
28 marriage licenses and shall be regarded as absolutely
29 confidential by every person whose duty it may be to obtain,
30 make, transmit or receive the information or report.

1 § 1306. Oral examination.

2 Each of the applicants for a marriage license shall appear in
3 person and shall be examined under oath or affirmation as to:

4 (1) The legality of the contemplated marriage.

5 (2) Any prior marriage or marriages and its or their
6 dissolution.

7 (3) The restrictions set forth in section 1304 (relating
8 to restrictions on issuance of license).

9 (4) All the information required to be furnished on the
10 application for license as prepared and approved by the
11 department.

12 § 1307. Issuance of license.

13 The marriage license shall be issued if it appears from
14 properly completed applications on behalf of each of the parties
15 to the proposed marriage that there is no legal objection to the
16 marriage. Except as provided by section 1303(b) (relating to
17 waiting period after application), the license shall not be
18 issued prior to the third day following the date of the most
19 recent of the two applications therefor.

20 § 1308. Judicial review of refusal to issue license.

21 (a) Certifying proceedings to court.--If the issuance of a
22 marriage license is refused, upon request of the applicants, the
23 proceedings shall immediately be certified to the court without
24 formality or expense to the applicants.

25 (b) Prompt hearing.--The application for a marriage license
26 shall be heard by a judge of the court, without a jury, in court
27 or in chambers at the earliest possible time.

28 § 1309. Filing application and consent certificates.

29 The applications for marriage licenses and consent
30 certificates shall be immediately filed and docketed as public

1 records.

2 § 1310. Duration and form of license.

3 The marriage license shall not be valid for a longer period
4 than 60 days from the date of issue and shall be in
5 substantially the following form:

6 Commonwealth of Pennsylvania

7 ss: No. _____

8 County of (name)

9 To any person authorized by law to solemnize marriage:

10 You are hereby authorized to join together in holy state
11 of matrimony, according to the laws of the Commonwealth of
12 Pennsylvania, (name) and (name).

13 Given under my hand and seal of the Court of Common Pleas
14 of (name), at (city, borough or town), on (date).

15 Signed _____

16 (Official Title)

17 CHAPTER 15

18 MARRIAGE CEREMONY

19 Sec.

20 1501. Form of marriage certificates.

21 1502. Forms where parties perform ceremony.

22 1503. Persons qualified to solemnize marriages.

23 1504. Returns of marriages.

24 § 1501. Form of marriage certificates.

25 The marriage license shall have appended to it two
26 certificates, numbered to correspond with the license (one
27 marked original and one marked duplicate), which shall be in
28 substantially the following form:

29 I hereby certify that on (date), at (city, borough or
30 town), Pennsylvania, (name) and (name) were by me united in

1 marriage, in accordance with license issued by the Court of
2 Common Pleas of (name) numbered ____.

3 Signed _____

4 (Title of person solemnizing marriage)

5 Address _____

6 § 1502. Forms where parties perform ceremony.

7 (a) Declaration of authorization.--In all cases in which the
8 parties intend to solemnize their marriage by religious ceremony
9 without officiating clergy, the marriage shall not take place
10 until their right so to do is certified in a declaration in
11 substantially the following form:

12 Commonwealth of Pennsylvania

13 ss: No. _____

14 County of (name)

15 To (name) and (name)

16 Legal evidence having been furnished to me, in accordance
17 with law, this certifies that I am satisfied that there is no
18 legal impediment to you joining yourselves together in
19 marriage.

20 Signed _____

21 (Official Title)

22 (b) Marriage certificates.--In lieu of the certificate set
23 forth in section 1501 (relating to form of marriage
24 certificates) there shall be appended to the declaration two
25 certificates, numbered to correspond to the declaration, in the
26 following form:

27 We hereby certify that on (date), we united ourselves in
28 marriage, at (city, borough or town), County of (name),
29 Pennsylvania, having first obtained from the Court of Common
30 Pleas of (name) a declaration numbered ____ that the court

1 was satisfied that there was no existing legal impediment to
2 our so doing.

3 Signed _____

4 Signed _____

5 We, the undersigned, were present at the solemnization of
6 the marriage of (name) and (name), as set forth in the
7 foregoing certificate.

8 Signed _____

9 Signed _____

10 § 1503. Persons qualified to solemnize marriages.

11 (a) General rule.--The following are authorized to solemnize
12 marriages between persons that produce a marriage license issued
13 under this part:

14 (1) A justice, judge or district justice of this
15 Commonwealth.

16 (2) A former or retired justice, judge or district
17 justice of this Commonwealth who is serving as a senior judge
18 or senior district justice as provided or prescribed by law.

19 (3) An active or senior judge or full-time magistrate of
20 the District Courts of the United States for the Eastern,
21 Middle or Western Districts of Pennsylvania.

22 (4) An active or senior judge of the United States Court
23 of Appeals for the Third Circuit who is a resident of this
24 Commonwealth.

25 (5) A mayor of any city or borough of this Commonwealth.

26 (6) A minister, priest or rabbi of any regularly
27 established church or congregation.

28 (b) Religious organizations.--Every religious society,
29 religious institution or religious organization in this
30 Commonwealth may join persons together in marriage when at least

1 one of the persons is a member of the society, institution or
2 organization, according to the rules and customs of the society,
3 institution or organization.

4 (c) Marriage license needed to officiate.--No person or
5 religious organization qualified to perform marriages shall
6 officiate at a marriage ceremony without the parties having
7 obtained a marriage license issued under this part.

8 § 1504. Returns of marriages.

9 (a) General rule.--The original marriage certificate shall
10 be signed by the person solemnizing the marriage and given to
11 the parties contracting the marriage. The duplicate certificate
12 shall be signed by the person or by a member of the religious
13 society, institution or organization solemnizing the marriage
14 and returned for recording within ten days to the court which
15 issued the license.

16 (b) Marriage performed by parties.--If the marriage was
17 solemnized by the parties themselves, the original certificate
18 shall be signed by the parties to the marriage, attested by two
19 witnesses and retained by the parties contracting the marriage.
20 The duplicate certificate shall be signed by the parties to the
21 marriage, attested by the same two witnesses and returned for
22 recording within ten days to the court issuing the license.

23 CHAPTER 17

24 MISCELLANEOUS PROVISIONS RELATING TO MARRIAGE

25 Sec.

26 1701. Decree that spouse of applicant is presumed decedent.

27 1702. Marriage during existence of former marriage.

28 1703. Marriage within degree of consanguinity.

29 § 1701. Decree that spouse of applicant is presumed decedent.

30 (a) Finding of death.--When the spouse of an applicant for a

1 marriage license has disappeared or is absent from the place of
2 residence of the spouse without being heard of after diligent
3 inquiry, the court, aided by the report of a master if
4 necessary, upon petition of the applicant for a marriage
5 license, may make a finding and decree that the absentee is dead
6 and the date of death if notice to the absentee has been given
7 as provided in subsection (d) and either of the applicants is
8 and for one year or more prior to the application has been a
9 resident of this Commonwealth.

10 (b) Presumption from absence.--When the death of the spouse
11 of an applicant for a marriage license is in issue, the
12 unexplained absence from the last known place of residence and
13 the fact that the absentee has been unheard of for seven years
14 may be sufficient ground for finding that the absentee died
15 seven years after the absentee was last heard from.

16 (c) Exposure to specific peril.--The fact that an absentee
17 spouse was exposed to a specific peril of death may be a
18 sufficient ground for finding that the absentee died less than
19 seven years after the absentee was last heard from.

20 (d) Notice to absentee.--The court may require advertisement
21 in any newspapers as the court, according to the circumstances
22 of the case, deems advisable of the fact of the application for
23 the marriage license together with notice that at a specified
24 time and place the court will hear evidence concerning the
25 alleged absence, including the circumstances and duration
26 thereof.

27 (e) Remarriage after decree of presumed death.--Even though
28 the absentee spouse declared to be presumed dead is in fact
29 alive, the remarriage of the spouse who has obtained a license
30 to marry and a decree of presumed death of the former spouse

1 shall be valid for all purposes as though the former marriage
2 had been terminated by divorce and all property of the presumed
3 decedent shall be administered and disposed of as provided by
4 Title 20 (relating to decedents, estates and fiduciaries).

5 § 1702. Marriage during existence of former marriage.

6 (a) General rule.--If a married person, during the lifetime
7 of the other person with whom the marriage is in force, enters
8 into a subsequent marriage pursuant to the requirements of this
9 part and the parties to the marriage live together thereafter as
10 husband and wife, and the subsequent marriage was entered into
11 by one or both of the parties in good faith in the full belief
12 that the former spouse was dead or that the former marriage has
13 been annulled or terminated by a divorce, or without knowledge
14 of the former marriage, they shall, after the impediment to
15 their marriage has been removed by the death of the other party
16 to the former marriage or by annulment or divorce, if they
17 continue to live together as husband and wife in good faith on
18 the part of one of them, be held to have been legally married
19 from and immediately after the date of death or the date of the
20 decree of annulment or divorce.

21 (b) False rumor of death of spouse.--Where a remarriage has
22 occurred upon false rumor of the death of a former spouse in
23 appearance well-founded but there has been no decree of presumed
24 death, the remarriage shall be void and subject to annulment by
25 either party to the remarriage as provided by section 3304
26 (relating to annulment or invalidity of void marriages) and the
27 returning spouse shall have cause for divorce as provided in
28 section 3301 (relating to grounds for divorce).

29 (c) Criminal penalties.--Where the remarriage was entered
30 into in good faith, neither party to the remarriage shall be

1 subject to criminal prosecution for bigamy.

2 § 1703. Marriage within degree of consanguinity.

3 All marriages within the prohibited degrees of consanguinity
4 as set forth in this part are voidable but when any of these
5 marriages have not been dissolved during the lifetime of the
6 parties, the unlawfulness of the marriage shall not be inquired
7 into after the death of either of the parties to the marriage.

8 CHAPTER 19

9 ABOLITION OF ACTIONS FOR ALIENATION OF AFFECTIONS

10 AND BREACH OF PROMISE TO MARRY

11 Sec.

12 1901. Actions for alienation of affections abolished.

13 1902. Actions for breach of promise to marry abolished.

14 1903. Purpose of chapter.

15 1904. Filing or threatening to file actions prohibited.

16 1905. Instruments executed in satisfaction of abolished
17 claims prohibited.

18 § 1901. Actions for alienation of affections abolished.

19 (a) General rule.--All civil causes of action for alienation
20 of affections of husband or wife are abolished.

21 (b) Exception.--Subsection (a) does not apply to cases where
22 the defendant is a parent, brother or sister or a person
23 formerly in loco parentis to the spouse of plaintiff.

24 § 1902. Actions for breach of promise to marry abolished.

25 All causes of action for breach of contract to marry are
26 abolished.

27 § 1903. Purpose of chapter.

28 (a) General rule.--No act done within this Commonwealth
29 shall give rise, either within or without this Commonwealth, to
30 a cause of action abolished by this chapter.

1 (b) Contract to marry.--No contract to marry which is made
2 within this Commonwealth shall give rise, either within or
3 without this Commonwealth, to a cause of action for breach of
4 the contract.

5 (c) Intention of section.--It is the intention of this
6 section to fix the effect, status and character of such acts and
7 contracts and to render them ineffective to support or give rise
8 to any such causes of action, either within or without this
9 Commonwealth.

10 § 1904. Filing or threatening to file actions prohibited.

11 It is unlawful for a person, either as litigant or attorney,
12 to file, cause to be filed, threaten to file or threaten to
13 cause to be filed in a court in this Commonwealth any pleading
14 or paper setting forth or seeking to recover upon any cause of
15 action abolished or barred by this chapter whether the cause of
16 action arose within or without this Commonwealth.

17 § 1905. Instruments executed in satisfaction of abolished
18 claims prohibited.

19 (a) Contracts and instruments void.--All contracts and
20 instruments of every kind executed within this Commonwealth in
21 payment, satisfaction, settlement or compromise of any claim or
22 cause of action abolished or barred by this chapter, whether the
23 claim or cause of action arose within or without this
24 Commonwealth, are contrary to the public policy of this
25 Commonwealth and void.

26 (b) Execution and use prohibited.--It is unlawful to cause,
27 induce or procure a person to execute a contract or instrument
28 proscribed by this chapter, or cause, induce or procure a person
29 to give, pay, transfer or deliver any money or thing of value in
30 payment, satisfaction, settlement or compromise of any such

1 claim or cause of action, or to receive, take or accept any such
2 money or thing of value in such payment, satisfaction,
3 settlement or compromise.

4 (c) Actions to enforce prohibited.--It is unlawful to
5 commence or cause to be commenced, either as litigant or
6 attorney, in a court of this Commonwealth any proceeding or
7 action seeking to enforce or recover upon a contract or
8 instrument proscribed by this chapter, knowing it to be such,
9 whether the contract or instrument was executed within or
10 without this Commonwealth.

11 (d) Exceptions.--This section does not apply to the payment,
12 satisfaction, settlement or compromise of any causes of action
13 which are not abolished or barred by this chapter or to the bona
14 fide holder in due course of a negotiable instrument.

15 PART IV

16 DIVORCE

17 Chapter

18 31. Preliminary Provisions

19 33. Dissolution of Marital Status

20 35. Property Rights

21 37. Alimony and Support

22 CHAPTER 31

23 PRELIMINARY PROVISIONS

24 Sec.

25 3101. Short title of part.

26 3102. Legislative findings and intent.

27 3103. Definitions.

28 3104. Bases of jurisdiction.

29 § 3101. Short title of part.

30 This part shall be known and may be cited as the "Divorce

1 Code."

2 § 3102. Legislative findings and intent.

3 (a) Policy.--The family is the basic unit in society and the
4 protection and preservation of the family is of paramount public
5 concern. Therefore, it is the policy of the Commonwealth to:

6 (1) Make the law for legal dissolution of marriage
7 effective for dealing with the realities of matrimonial
8 experience.

9 (2) Encourage and effect reconciliation and settlement
10 of differences between spouses, especially where children are
11 involved.

12 (3) Give primary consideration to the welfare of the
13 family rather than the vindication of private rights or the
14 punishment of matrimonial wrongs.

15 (4) Mitigate the harm to the spouses and their children
16 caused by the legal dissolution of the marriage.

17 (5) Seek causes rather than symptoms of family
18 disintegration and cooperate with and utilize the resources
19 available to deal with family problems.

20 (6) Effectuate economic justice between parties who are
21 divorced or separated and grant or withhold alimony according
22 to the actual need and ability to pay of the parties and
23 insure a fair and just determination and settlement of their
24 property rights.

25 (b) Construction of part.--The objectives set forth in
26 subsection (a) shall be considered in construing provisions of
27 this part and shall be regarded as expressing the legislative
28 intent.

29 § 3103. Definitions.

30 The following words and phrases when used in this part shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Alimony." An order for support granted by this Commonwealth
4 or any other state to a spouse or former spouse in conjunction
5 with a decree granting a divorce or annulment.

6 "Alimony pendente lite." An order for temporary support
7 granted to a spouse during the pendency of a divorce or
8 annulment proceeding.

9 "Divorce." Divorce from the bonds of matrimony.

10 "Grounds for divorce." The grounds enumerated in section
11 3301 (relating to grounds for divorce).

12 "Irretrievable breakdown." Estrangement due to marital
13 difficulties with no reasonable prospect of reconciliation.

14 "Qualified professionals." Includes marriage counselors,
15 psychologists, psychiatrists, social workers, ministers,
16 priests, rabbis or other persons who, by virtue of their
17 training and experience, are able to provide counseling.

18 "Separate and apart." Complete cessation of any and all
19 cohabitation.

20 § 3104. Bases of jurisdiction.

21 (a) Residence and domicile of parties.--No spouse is
22 entitled to commence an action for divorce or annulment under
23 this part unless at least one of the parties has been a bona
24 fide resident in this Commonwealth for at least six months
25 immediately previous to the commencement of the action. Both
26 parties shall be competent witnesses to prove their respective
27 residence and proof of actual residence within this Commonwealth
28 for six months shall create a presumption of domicile within
29 this Commonwealth.

30 (b) Powers of court.--The court has authority to entertain

an action under this part notwithstanding the fact that the marriage of the parties and the cause for divorce occurred outside of this Commonwealth and that both parties were at the time of the occurrence domiciled without this Commonwealth. The court also has the power to annul void or voidable marriages celebrated without this Commonwealth at a time when neither party was domiciled within this Commonwealth.

CHAPTER 33

DISSOLUTION OF MARITAL STATUS

Subchapter

A. General Provisions

B. Procedure

C. Attacks Upon Decrees

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

3301. Grounds for divorce.

3302. Counseling.

3303. Annulment of void and voidable marriages.

3304. Grounds for annulment of void marriages.

3305. Grounds for annulment of voidable marriages.

3306. Proceedings to determine marital status.

3307. Defenses.

3308. Action where defendant suffering from mental disorder.

3309. General appearance and collusion.

§ 3301. Grounds for divorce.

(a) Fault.--The court may grant a divorce to the innocent and injured spouse whenever it is judged that the other spouse has:

(1) Committed willful and malicious desertion, and

1 absence from the habitation of the injured and innocent
2 spouse, without a reasonable cause, for the period of one or
3 more years.

4 (2) Committed adultery.

5 (3) By cruel and barbarous treatment, endangered the
6 life or health of the injured and innocent spouse.

7 (4) Knowingly entered into a bigamous marriage while a
8 former marriage is still subsisting.

9 (5) Been sentenced to imprisonment for a term of two or
10 more years upon conviction of having committed a crime.

11 (6) Offered such indignities to the innocent and injured
12 spouse as to render that spouse's condition intolerable and
13 life burdensome.

14 (b) Institutionalization.--The court may grant a divorce
15 from a spouse upon the ground that insanity or serious mental
16 disorder has resulted in confinement in a mental institution for
17 at least three years immediately before the commencement of an
18 action under this part and where there is no reasonable prospect
19 that the spouse will be discharged from inpatient care during
20 the three years subsequent to the commencement of the action. A
21 presumption that no prospect of discharge exists shall be
22 established by a certificate of the superintendent of the
23 institution to that effect and which includes a supporting
24 statement of a treating physician.

25 (c) Mutual consent.--The court may grant a divorce where it
26 is alleged that the marriage is irretrievably broken and 90 days
27 have elapsed from the date of commencement of an action under
28 this part and an affidavit has been filed by each of the parties
29 evidencing that each of the parties consents to the divorce.

30 (d) Irretrievable breakdown.--

1 (1) The court may grant a divorce where a party has
2 filed an affidavit alleging that the parties have lived
3 separate and apart for a period of at least three years and
4 that the marriage is irretrievably broken and the defendant
5 either:

6 (i) Does not deny the allegations set forth in the
7 affidavit.

8 (ii) Denies one or more of the allegations set forth
9 in the affidavit but, after notice and hearing, the court
10 determines that the parties have lived separate and apart
11 for a period of at least three years and that the
12 marriage is irretrievably broken.

13 (2) If a hearing has been held pursuant to paragraph
14 (1)(ii) and the court determines that there is a reasonable
15 prospect of reconciliation, then the court shall continue the
16 matter for a period not less than 90 days nor more than 120
17 days unless the parties agree to a period in excess of 120
18 days. During this period, the court shall require counseling
19 as provided in section 3302 (relating to counseling). If the
20 parties have not reconciled at the expiration of the time
21 period and one party states under oath that the marriage is
22 irretrievably broken, the court shall determine whether the
23 marriage is irretrievably broken. If the court determines
24 that the marriage is irretrievably broken, the court shall
25 grant the divorce. Otherwise, the court shall deny the
26 divorce.

27 § 3302. Counseling.

28 (a) Indignities.--Whenever indignities under section
29 3301(a)(6) (relating to grounds for divorce) is the ground for
30 divorce, the court shall require up to a maximum of three

1 counseling sessions where either of the parties requests it.

2 (b) Mutual consent.--Whenever mutual consent under section
3 3301(c) is the ground for divorce, the court shall require up to
4 a maximum of three counseling sessions within the 90 days
5 following the ~~filing of the complaint~~ COMMENCEMENT OF THE ACTION <—
6 where either of the parties requests it.

7 (c) Irretrievable breakdown.--Whenever the court orders a
8 continuation period as provided for irretrievable breakdown in
9 section 3301(d)(2), the court shall require up to a maximum of
10 three counseling sessions within the time period where either of
11 the parties requests it or may require such counseling where the
12 parties have at least one child under 16 years of age.

13 (d) Notification of availability of counseling.--Whenever
14 section 3301(a)(6), (c) or (d) is the ground for divorce, the
15 court shall, upon the commencement of an action under this part,
16 notify both parties of the availability of counseling and, upon
17 request, provide both parties a list of qualified professionals
18 who provide such services.

19 (e) Choice of qualified professionals unrestricted.--The
20 choice of a qualified professional shall be at the option of the
21 parties and the professional need not be selected from the list
22 provided by the court.

23 (f) Report.--Where the court requires counseling, a report
24 shall be made by the qualified professional stating that the
25 parties did or did not attend.

26 § 3303. Annulment of void and voidable marriages.

27 In all cases where a supposed or alleged marriage has been
28 contracted which is void or voidable under this title or under
29 applicable law, either party to the supposed or alleged marriage
30 may bring an action in annulment to have it declared void in

1 accordance with the procedures provided by this part and
2 prescribed by general rules.

3 § 3304. Grounds for annulment of void marriages.

4 (a) General rule.--Where there has been no confirmation by
5 cohabitation following the removal of an impediment, the
6 supposed or alleged marriage of a person shall be deemed void in
7 the following cases:

8 (1) Where either party at the time of such marriage had
9 an existing spouse and the former marriage had not been
10 annulled nor had there been a divorce except where that party
11 had obtained a decree of presumed death of the former spouse.

12 (2) Where the parties to such marriage are related
13 within the degrees of consanguinity prohibited by section
14 1304(e) (relating to restriction on issuance of license).

15 (3) Where either party to such marriage was incapable of
16 consenting by reason of insanity or serious mental disorder
17 or otherwise lacked capacity to consent or did not intend to
18 consent to the marriage.

19 (b) Procedures.--In all cases of marriages which are void,
20 the marriage may be annulled as set forth in section 3303
21 (relating to annulment of void and voidable marriages) or its
22 invalidity may be declared in any collateral proceeding.

23 § 3305. Grounds for annulment of voidable marriages.

24 (a) General rule.--The marriage of a person shall be deemed
25 voidable and subject to annulment in the following cases:

26 (1) Where either party to the marriage was under 16
27 years of age unless the marriage was expressly authorized by
28 the court.

29 (2) Where either party was 16 or 17 years of age and
30 lacked the consent of parent or guardian or express

1 authorization of the court and has not subsequently ratified
2 the marriage upon reaching 18 years of age and an action for
3 annulment is commenced within 60 days after the marriage
4 ceremony.

5 (3) Where either party to the marriage was under the
6 influence of alcohol or drugs and an action for annulment is
7 commenced within 60 days after the marriage ceremony.

8 (4) Where either party to the marriage was at the time
9 of the marriage and still is naturally and incurably impotent
10 unless the condition was known to the other party prior to
11 the marriage.

12 (5) Where one party was induced to enter into the
13 marriage due to fraud, duress, coercion or force attributable
14 to the other party and there has been no subsequent voluntary
15 cohabitation after knowledge of the fraud or release from the
16 effects of fraud, duress, coercion or force.

17 (b) Status of voidable marriage.--In all cases of marriages
18 which are voidable, either party to the marriage may seek and
19 obtain an annulment of the marriage but, until a decree of
20 annulment is obtained from a court of competent jurisdiction,
21 the marriage shall be valid. The validity of a voidable marriage
22 shall not be subject to attack or question by any person if it
23 is subsequently confirmed by the parties to the marriage or if
24 either party has died.

25 § 3306. Proceedings to determine marital status.

26 When the validity of a marriage is denied or doubted, either
27 or both of the parties to the marriage may bring an action for a
28 declaratory judgment seeking a declaration of the validity or
29 invalidity of the marriage and, upon proof of the validity or
30 invalidity of the marriage, the marriage shall be declared valid

1 or invalid by decree of the court and, unless reversed upon
2 appeal, the declaration shall be conclusive upon all persons
3 concerned.

4 § 3307. Defenses.

5 (a) General rule.--Existing common law defenses are retained
6 as to the grounds enumerated in section 3301(a) and (b)
7 (relating to grounds for divorce). The defenses of condonation,
8 connivance, collusion, recrimination and provocation are
9 abolished as to the grounds enumerated in section 3301(c) and
10 (d).

11 (b) Adultery.--In an action for divorce on the ground of
12 adultery, it is a good defense and a perpetual bar against the
13 action if the defendant alleges and proves, or if it appears in
14 the evidence, that the plaintiff:

15 (1) has been guilty of like conduct;

16 (2) has admitted the defendant into conjugal society or
17 embraces after the plaintiff knew of the fact;

18 (3) allowed the defendant's prostitution or received
19 hire from it; or

20 (4) exposed the defendant to lewd company whereby the
21 defendant became involved in the adultery.

22 § 3308. Action where defendant suffering from mental disorder.

23 If a spouse is insane or suffering from serious mental
24 disorder, an action may be commenced under this part against
25 that spouse upon any ground for divorce or annulment.

26 § 3309. General appearance and collusion.

27 The entry of a general appearance by, or in behalf of, a
28 defendant does not constitute collusion. Collusion shall be
29 found to exist only where the parties conspired to fabricate
30 grounds for divorce or annulment, agreed to and did commit

1 perjury or perpetrated fraud on the court. Negotiation and
2 discussion of terms of property settlement and other matters
3 arising by reason of contemplated divorce or annulment do not
4 constitute collusion.

5 SUBCHAPTER B

6 PROCEDURE

7 Sec.

8 3321. Hearing by master.

9 3322. Jury trial.

10 3323. Decree of court.

11 § 3321. Hearing by master.

12 The court may appoint a master to hear testimony on all or
13 some issues, except issues of custody and paternity, and return
14 the record and a transcript of the testimony together with a
15 report and recommendation as prescribed by general rules or a
16 judge of the court in chambers may appoint a master to take
17 testimony and return a transcript of the testimony to the court.

18 § 3322. Jury trial.

19 (a) Application for jury trial.--After service of the
20 complaint in divorce or annulment on the defendant in the manner
21 prescribed by general rules or entry of a general appearance for
22 the defendant, if either of the parties desires any matter of
23 fact that is affirmed by one and denied by the other to be tried
24 by a jury, that party may take a rule upon the opposite party,
25 to be allowed by a judge of the court, to show cause why the
26 issues of fact set forth in the rule should not be tried by a
27 jury which rule shall be served upon the opposite party or
28 counsel for the opposite party.

29 (b) Disposition of application.--Upon the return of the
30 rule, after hearing, the court may discharge it, make it

1 absolute or frame issues itself. Only the issues ordered by the
2 court shall be tried. The rule shall not be made absolute when,
3 in the opinion of the court, a trial by jury cannot be had
4 without prejudice to the public morals.

5 § 3323. Decree of court.

6 (a) General rule.--In all matrimonial causes, the court may
7 either dismiss the complaint or enter a decree of divorce or
8 annulment of the marriage.

9 (b) Contents of decree.--A decree granting a divorce or an
10 annulment shall include, after a full hearing, where these
11 matters are raised in the pleadings, an order determining and
12 disposing of existing property rights and interests between the
13 parties, custody and visitation rights, child support, alimony
14 and any other related matters including the enforcement of
15 separation agreements voluntarily entered into between the
16 parties. In the event that the court is unable for any reason to
17 determine and dispose of the matters provided for in this
18 subsection within 30 days after the report of the master has
19 been filed, it may enter a decree of divorce or annulment. The
20 court may order alimony, reasonable counsel fees and expenses
21 pending final disposition of the matters provided for in this
22 subsection.

23 SUBCHAPTER C

24 ATTACKS UPON DECREES

25 Sec.

26 3331. Limitations on attacks upon decrees.

27 3332. Opening or vacating decrees.

28 3333. Res judicata and estoppel.

29 § 3331. Limitations on attacks upon decrees.

30 The validity of a decree of divorce or annulment issued by a

1 court shall not be questioned, except by appeal, in any court or
2 place in this Commonwealth after the death of either party to
3 the proceeding. If it is shown that a party who subsequently
4 attempts to question the validity of the decree had full
5 knowledge of the facts and circumstances later complained of at
6 the time of issuance of the decree or failed to take any action
7 despite this knowledge within two years after the date of the
8 decree, the party shall be barred from questioning the decree
9 and it shall be valid in all courts and places within this
10 Commonwealth.

11 § 3332. Opening or vacating decrees.

12 A motion to open a decree of divorce or annulment may be made
13 only within the period limited by 42 Pa.C.S. § 5505 (relating to
14 modification of orders) and not thereafter. The motion may lie
15 where it is alleged that the decree was procured by intrinsic
16 fraud or that there is new evidence relating to the cause of
17 action which will sustain the attack upon its validity. A motion
18 to vacate a decree or strike a judgment alleged to be void
19 because of extrinsic fraud, lack of jurisdiction over the
20 subject matter or a fatal defect apparent upon the face of the
21 record must be made within five years after entry of the final
22 decree. Intrinsic fraud relates to a matter adjudicated by the
23 judgment, including perjury and false testimony, whereas
24 extrinsic fraud relates to matters collateral to the judgment
25 which have the consequence of precluding a fair hearing or
26 presentation of one side of the case.

27 § 3333. Res judicata and estoppel.

28 The validity of a divorce or annulment decree granted by a
29 court having jurisdiction over the subject matter may not be
30 questioned by a party who was subject to the personal

1 jurisdiction of the court except by direct appeal provided or
2 prescribed by law. A party who sought and obtained a decree,
3 financed or agreed to its procurement, or accepted a property
4 settlement, alimony pendente lite or alimony pursuant to the
5 terms of the decree, or who remarries after the decree, or is
6 guilty of laches, is barred from making a collateral attack upon
7 the validity of the decree unless by clear and convincing
8 evidence it is established that fraud by the other party
9 prevented the making of a timely appeal from the divorce or
10 annulment decree.

11 CHAPTER 35

12 PROPERTY RIGHTS

13 Sec.

14 3501. Definition.

15 3502. Equitable division of marital property.

16 3503. Effect of divorce on property rights generally.

17 3504. Disposition of property after termination of marriage.

18 3505. Disposition of property to defeat obligations.

19 3506. Statement of reasons for distribution.

20 3507. Division of entireties property between divorced persons.

21 3508. Conveyance of entireties property to divorced spouse.

22 § 3501. Definition.

23 (a) General rule.--As used in this chapter "marital
24 property" means all property acquired by either party during the
25 marriage except:

26 (1) Property acquired in exchange for property acquired
27 prior to the marriage except for the increase in value during
28 the marriage.

29 (2) Property excluded by valid agreement of the parties
30 entered into before, during or after the marriage.

1 (3) Property acquired by gift, bequest, devise or
2 descent except for the increase in value during the marriage.

3 (4) Property acquired after separation until the date of
4 divorce or, if the parties separate and reconcile, all
5 property acquired subsequent to the final separation until
6 their divorce.

7 (5) Property which a party has sold, granted, conveyed
8 or otherwise disposed of in good faith and for value prior to
9 the time proceedings for the divorce are commenced.

10 (6) Veterans' benefits exempt from attachment, levy or
11 seizure pursuant to the act of September 2, 1958, Public Law
12 85-857, 72 Statute 1229, as amended, except for those
13 benefits received by a veteran where the veteran has waived a
14 portion of his military retirement pay in order to receive
15 veterans' compensation.

16 (7) Property to the extent to which the property has
17 been mortgaged or otherwise encumbered in good faith for
18 value prior to the time proceedings for the divorce are
19 commenced.

20 (b) Presumption.--All real or personal property acquired by
21 either party during the marriage is presumed to be marital
22 property regardless of whether title is held individually or by
23 the parties in some form of co-ownership such as joint tenancy,
24 tenancy in common or tenancy by the entirety. The presumption of
25 marital property is overcome by a showing that the property was
26 acquired by a method listed in subsection (a).

27 § 3502. Equitable division of marital property.

28 (a) General rule.--In an action for divorce or annulment,
29 the court shall, upon request of either party, equitably divide,
30 distribute or assign the marital property between the parties

1 without regard to marital misconduct in such proportions as the
2 court deems just after considering all relevant factors
3 including:

4 (1) The length of the marriage.

5 (2) Any prior marriage of either party.

6 (3) The age, health, station, amount and sources of
7 income, vocational skills, employability, estate, liabilities
8 and needs of each of the parties.

9 (4) The contribution by one party to the education,
10 training or increased earning power of the other party.

11 (5) The opportunity of each party for future
12 acquisitions of capital assets and income.

13 (6) The sources of income of both parties, including but
14 not limited to medical, retirement, insurance or other
15 benefits.

16 (7) The contribution or dissipation of each party in the
17 acquisition, preservation, depreciation or appreciation of
18 the marital property, including the contribution of a party
19 as homemaker.

20 (8) The value of the property set apart to each party.

21 (9) The standard of living of the parties established
22 during the marriage.

23 (10) The economic circumstances of each party at the
24 time the division of property is to become effective.

25 (b) Lien.--The court may impose a lien or charge upon the
26 marital property assigned to a party as security for the payment
27 of alimony or other award for the other party.

28 (c) Family home.--The court may award to one, each or both
29 of the parties the right to live in the family home for
30 reasonable periods of time.

1 (d) Life insurance.--The court may direct the continued
2 maintenance and beneficiary designations of existing policies
3 insuring the life of either party. This subsection extends only
4 to policies originally purchased during the marriage and owned
5 by or within the effective control of either party.

6 § 3503. Effect of divorce on property rights generally.

7 Whenever a decree or judgment is granted which nullifies or
8 absolutely terminates the bonds of matrimony, all property
9 rights which are dependent upon the marital relation, except
10 those which are vested rights, are terminated unless the court
11 expressly provides otherwise in its decree. All duties, rights
12 and claims accruing to either of the parties at any time
13 theretofore in pursuance of the marriage shall cease and the
14 parties shall severally be at liberty to marry again as if they
15 had never been married.

16 § 3504. Disposition of property after termination of marriage.

17 Unless provided otherwise by the court, whenever a decree of
18 divorce or annulment is entered by a court of competent
19 jurisdiction, both parties whose marriage is terminated or
20 affected shall have complete freedom of disposition as to their
21 separate real and personal property and may mortgage, sell,
22 grant, convey or otherwise encumber or dispose of their separate
23 property, whether the property was acquired before, during or
24 after coverture, and neither need join in, consent to or
25 acknowledge a deed, mortgage or instrument of the other.

26 § 3505. Disposition of property to defeat obligations.

27 (a) Preliminary relief.--Where it appears to the court that
28 a party is about to leave the jurisdiction of the court or is
29 about to remove property of that party from the jurisdiction of
30 the court or is about to dispose of, alienate or encumber

1 property in order to defeat alimony pendente lite, alimony,
2 child and spousal support or a similar award, an injunction may
3 issue to prevent the removal or disposition and the property may
4 be attached as prescribed by general rules. The court may also
5 issue a writ of ne exeat to preclude the removal.

6 (b) Inventory of property.--Both parties shall submit to the
7 court an inventory and appraisal of all property owned or
8 possessed at the time action was commenced.

9 (c) Constructive trust for undisclosed assets.--If a party
10 deliberately or negligently fails to disclose information
11 required by subsection (b) and in consequence thereof an asset
12 or assets with a fair market value of \$500 or more is omitted
13 from the final distribution of property, the party aggrieved by
14 the nondisclosure may at any time petition the court granting
15 the divorce or annulment to declare the creation of a
16 constructive trust as to all undisclosed assets for the benefit
17 of the parties and their minor or dependent children, if any.
18 The party in whose name the assets are held shall be declared
19 the constructive trustee and the trust may include any terms and
20 conditions the court may determine. The court shall grant the
21 petition upon a finding of a failure to disclose the assets as
22 required under subsection (b).

23 (d) Encumbrance or disposition to third parties.--An
24 encumbrance or disposition of property to third persons who had
25 notice of the pendency of the matrimonial action or who paid
26 wholly inadequate consideration for the property may be deemed
27 fraudulent and declared void.

28 § 3506. Statement of reasons for distribution.

29 In an order made under this chapter for the distribution of
30 property the court shall set forth the reason for the

1 distribution ordered.

2 § 3507. Division of entireties property between divorced
3 persons.

4 (a) General rule.--Whenever married persons holding property
5 as tenants by entireties are divorced, they shall, except as
6 otherwise provided by an order made under this chapter,
7 thereafter hold the property as tenants in common of equal one-
8 half shares in value and either of them may bring an action
9 against the other to have the property sold and the proceeds
10 divided between them.

11 (b) Division of proceeds.--Except as provided in subsection
12 (c), the proceeds of a sale under this section, after the
13 payment of the expenses of sale, shall be equally divided
14 between the parties.

15 (c) Liens.--The amount of any lien entered of record jointly
16 against both of the parties, together with any interest due on
17 the lien and docket costs, shall be deducted from the proceeds
18 of sale and the amount of the liens entered of record against
19 either of the parties, together with any interest due on the
20 liens and docket costs, shall be deducted from the share of the
21 party against whom the lien is filed and paid to the person or
22 persons to whom the amount of the lien is due and payable.

23 (d) Record of divorce decree.--No decree of divorce shall be
24 effective to change the existing law relating to liens upon
25 property held by tenants by the entireties except a decree of
26 divorce that is valid in this Commonwealth and not until the
27 decree of divorce or a certified copy of the decree is recorded
28 in the office of the recorder of deeds of the county where the
29 property is situate. The decree shall be indexed in the
30 grantor's index against each of the tenants by the entireties.

1 § 3508. Conveyance of entireties property to divorced spouse.

2 Whenever married persons have acquired real estate as tenants
3 by entireties and thereafter are divorced, either former spouse,
4 except as otherwise provided by an order made under this
5 chapter, may convey to the other without the joinder of the
6 other the grantor's interest in the real estate so that the
7 grantee holds the real estate in fee simple, freed from all
8 right, title and interest which the grantor had in the real
9 estate as a tenant by the entireties.

10 CHAPTER 37

11 ALIMONY AND SUPPORT

12 Sec.

13 3701. Alimony.

14 3702. Alimony pendente lite, counsel fees and expenses.

15 3703. Enforcement of arrearages.

16 3704. Payment of support, alimony and alimony pendente lite.

17 3705. Alimony in case of foreign ex parte divorce or annulment.

18 3706. Enforcement of foreign decrees.

19 3707. Bar to alimony.

20 § 3701. Alimony.

21 (a) General rule.--The court may allow alimony, as it deems
22 reasonable, to either party only if it finds that the party
23 seeking alimony:

24 (1) lacks sufficient property, including but not limited
25 to any property distributed pursuant to Chapter 35 (relating
26 to property rights), to provide for the reasonable needs of
27 that party; and

28 (2) is unable to be self-supporting through appropriate
29 employment.

30 (b) Factors relevant.--In determining whether alimony is

1 necessary and in determining the nature, amount, duration and
2 manner of payment of alimony, the court shall consider all
3 relevant factors including:

4 (1) The relative earnings and earning capacities of the
5 parties.

6 (2) The ages and the physical, mental and emotional
7 conditions of the parties.

8 (3) The sources of income of both parties including but
9 not limited to medical, retirement, insurance or other
10 benefits.

11 (4) The expectancies and inheritances of the parties.

12 (5) The duration of the marriage.

13 (6) The contribution by one party to the education,
14 training or increased earning power of the other party.

15 (7) The extent to which it would be inappropriate for a
16 party, because the party will be custodian of a minor child,
17 to seek employment outside the home.

18 (8) The standard of living of the parties established
19 during the marriage.

20 (9) The relative education of the parties and the time
21 necessary to acquire sufficient education or training to
22 enable the party seeking alimony to find appropriate
23 employment.

24 (10) The relative assets and liabilities of the parties.

25 (11) The property brought to the marriage by either
26 party.

27 (12) The contribution of a spouse as homemaker.

28 (13) The relative needs of the parties.

29 (14) The marital misconduct of either of the parties
30 during the marriage. The marital misconduct of either of the

parties during separation subsequent to the commencement of an action for divorce under this part shall not be considered by the court in its determinations relative to alimony.

(c) Duration.--Unless the ability of the party seeking the alimony to provide for the reasonable needs of that party through employment is substantially diminished by reason of age, physical, mental or emotional condition, custody of minor children or other compelling impediment to gainful employment, the court in ordering alimony shall limit the duration of the order to a period of time which is reasonable for the purpose of allowing the party seeking alimony to meet these reasonable needs by:

(1) obtaining appropriate employment; or

(2) developing an appropriate employable skill.

(d) Statement of reasons.--In an order made under this section the court shall set forth the reason for its denial or award of alimony and the amount thereof.

(e) Modification and termination.--An order entered pursuant to this section is subject to further order of the court upon changed circumstances of either party of a substantial and continuing nature whereupon the order may be modified, suspended, terminated or reinstituted or a new order made. Any further order shall apply only to payments accruing subsequent to the petition for the requested relief. Remarriage of the party receiving alimony shall terminate the award of alimony.

(f) Status of agreement to pay alimony.--Whenever the court approves an agreement for the payment of alimony voluntarily entered into between the parties, the agreement shall constitute the order of the court and may be enforced as provided in section 3703 (relating to enforcement of arrearages).

1 § 3702. Alimony pendente lite, counsel fees and expenses.

2 In proper cases, upon petition, the court may allow a spouse
3 reasonable alimony pendente lite and reasonable counsel fees and
4 expenses.

5 § 3703. Enforcement of arrearages.

6 If at any time a party is in arrears in the payment of
7 alimony or alimony pendente lite as provided for in sections
8 3701 (relating to alimony) and 3702 (relating to alimony
9 pendente lite, counsel fees and expenses) the court may, after
10 hearing, in order to effect payment of the arrearages:

11 (1) Enter judgment.

12 (2) Authorize the taking and seizure of the goods and
13 chattels and the collection of the rents and profits of the
14 real estate of the party.

15 (3) Attach no more than 50% of the wages of the party.

16 (4) Award interest on unpaid installments.

17 (5) Require security to insure future payments.

18 (6) Issue attachment proceedings, directed to the
19 sheriff or other proper officer of the county, directing that
20 the person named as having failed to comply with the court
21 order be brought before the court at such time as the court
22 may direct. If the court finds, after hearing, that the named
23 person willfully failed to comply with the court order, it
24 may declare the person in civil contempt of court and in its
25 discretion make an appropriate order including, but not
26 limited to, commitment of the person to prison for a period
27 not to exceed six months.

28 § 3704. Payment of support, alimony and alimony pendente lite.

29 When so ordered by the court, all payments of child and
30 spousal support, alimony or alimony pendente lite shall be made

1 to the domestic relations section of the court which issued the
2 order or the domestic relations section of the court at the
3 residence of the party entitled to receive the award. The
4 domestic relations section shall keep an accurate record of all
5 payments and shall notify the court immediately whenever a
6 person subject to a payment order is 30 days in arrears of
7 payment so that appropriate action may be taken to enforce the
8 order of the court. The domestic relations section shall
9 distribute the payments to the person entitled to them as soon
10 as possible after receipt.

11 § 3705. Alimony in case of foreign ex parte divorce or
12 annulment.

13 A person who was a resident of this Commonwealth at the time
14 the person was a defendant or respondent in a foreign ex parte
15 action for divorce or annulment may petition a court of this
16 Commonwealth for alimony. If the person establishes the need for
17 alimony and if the court has jurisdiction over the person or
18 property of the other party, the court may order that alimony be
19 paid in the same manner and under the same conditions and
20 limitations which pertain when alimony is sought as provided in
21 this chapter. In the event that the other party from whom the
22 alimony is sought cannot be located within this Commonwealth,
23 the court may attach the tangible or intangible property of that
24 party which is within the jurisdiction of the court in the
25 manner prescribed by general rules except that no exemption
26 shall apply. The property shall thereupon be subject to the
27 payment of alimony in the same manner as provided by law in
28 actions for nonsupport.

29 § 3706. Enforcement of foreign decrees.

30 (a) General rule.--Whenever a person subject to a valid

1 decree of a sister state or territory for the payment of
2 alimony, temporary alimony or alimony pendente lite, or the
3 property of that person is found within this Commonwealth, the
4 obligee of the decree may petition the court where the obligor
5 or the property of the obligor is found to register, adopt as
6 its own and enforce the decree as a properly issued and
7 authenticated decree of a sister state or territory. Upon
8 registration and adoption, such relief and process for
9 enforcement as is provided or prescribed by law in similar cases
10 originally commenced in this Commonwealth shall be available. A
11 copy of the decree and order shall be forwarded to the court of
12 the state or territory which issued the original decree. The
13 obligor shall have whatever defenses and relief are available to
14 the obligor in the state or territory which issued the original
15 decree and may question the jurisdiction of that court if not
16 otherwise barred. Interest may be awarded on unpaid installments
17 and security may be required to insure future payments as in
18 cases originally commenced in this Commonwealth. Where property
19 of the obligor, but not the person of the obligor, is found
20 within this Commonwealth, there shall be jurisdiction quasi in
21 rem and, upon registration and adoption of the decree of the
22 sister state or territory, relief and enforcement of the decree
23 shall be available as in other proceedings which are quasi in
24 rem.

25 (b) Optional procedure.--The right of a judgment creditor to
26 proceed under 42 Pa.C.S. § 4306 (relating to enforcement of
27 foreign judgments) or otherwise instead of proceeding under this
28 section remains unimpaired.

29 § 3707. Bar to alimony.

30 No petitioner is entitled to receive an award of alimony

1 where the petitioner, subsequent to the divorce pursuant to
2 which alimony is being sought, has entered into cohabitation
3 with a person of the opposite sex who is not a member of the
4 family of the petitioner within the degrees of consanguinity.

5 PART VI

6 CHILDREN AND MINORS

7 Chapter

8 51. General Provisions

9 53. Custody

10 55. Liability for Tortious Acts of Children

11 CHAPTER 51

12 GENERAL PROVISIONS

13 Sec.

14 5101. Attainment of full age.

15 5102. Children declared to be legitimate.

16 5103. Acknowledgment and claim of paternity.

17 § 5101. Attainment of full age.

18 (a) Age for entering into contracts.--Any individual 18
19 years of age and older shall have the right to enter into
20 binding and legally enforceable contracts and the defense of
21 minority shall not be available to such individuals.

22 (b) Age for suing and being sued.--Except where otherwise
23 provided or prescribed by law, an individual 18 years of age and
24 older shall be deemed an adult and may sue and be sued as such.

25 § 5102. Children declared to be legitimate.

26 (a) General rule.--All children shall be legitimate
27 irrespective of the marital status of their parents and in every
28 case where children are born out of wedlock they shall enjoy all
29 the rights and privileges as if they had been born during the
30 wedlock of their parents except as otherwise provided in Title

1 20 (relating to decedents, estates and fiduciaries).

2 (b) Determination of paternity.--For purposes of prescribing
3 benefits to children born out of wedlock by, from and through
4 the father, paternity shall be determined by any one of the
5 following ways:

6 (1) If the parents of a child born out of wedlock have
7 married each other.

8 (2) If, during the lifetime of the child, it is
9 determined by clear and convincing evidence that the father
10 openly holds out the child to be his and either receives the
11 child into his home or provides support for the child.

12 (3) If there is clear and convincing evidence that the
13 man was the father of the child which may include a prior
14 court determination of paternity.

15 § 5103. Acknowledgment and claim of paternity.

16 (a) Acknowledgment of paternity.--The father of a child born
17 to an unmarried woman may file with the Department of Health on
18 forms prescribed by it an acknowledgment of paternity of the
19 child which shall include the consent of the mother of the child
20 supported by her affidavit. The department shall, upon receipt
21 of the acknowledgment, proceed as provided in section 603(a) of
22 the act of June 29, 1953 (P.L.304, No.66), known as the "Vital
23 Statistics Law of 1953," and the father shall have all the
24 rights and duties as to the child which he would have had if he
25 had been married to the mother at the time of the birth of the
26 child and the child shall have all the rights and duties as to
27 the father which the child would have had if the father had been
28 married to the mother at the time of birth. The acknowledgment
29 may also provide for the assumption by the child of the surname
30 of the father or other name desired by the parents.

(b) Claim of paternity.--If the mother of the child fails or refuses to join in the acknowledgment of paternity provided for in subsection (a), the Department of Health shall index it as a claim of paternity. The filing and indexing of a claim of paternity shall not confer upon the putative father any rights as to the child except that the putative father shall be entitled to notice of any proceeding brought to terminate any parental rights as to the child.

CHAPTER 53

CUSTODY

Subchapter

A. General Provisions

B. Child Custody Jurisdiction

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

5301. Declaration of policy.

5302. Definitions.

5303. Award of sole custody.

5304. Award of shared custody.

5305. Counseling.

5306. Plan for implementation of custody order.

5307. Denial of custody under agreement or plan.

5308. Removal of party or child from jurisdiction.

5309. Access to records and information.

5310. Modification of existing custody orders.

5311. Visitation rights of grandparents.

§ 5301. Declaration of policy.

The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child, to

1 assure a reasonable and continuing contact of the child with
2 both parents after a separation or dissolution of the marriage
3 and the sharing of the rights and responsibilities of child
4 rearing by both parents.

5 § 5302. Definitions.

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

9 "Child." Any unemancipated person under 18 years of age.

10 "Legal custody." The legal right to make major decisions
11 affecting the best interest of a minor child including, but not
12 limited to, medical, religious and educational decisions.

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

15 "Shared custody." An order awarding shared legal or shared
16 physical custody or both of a child in such a way as to assure
17 the child of frequent and continuing contact with and physical
18 access to both parents.

19 § 5303. Award of sole custody.

20 In making an order for custody to either parent individually,
21 the court shall consider, among other factors, which parent is
22 more likely to encourage, permit and allow frequent and
23 continuing contact and physical access between the noncustodial
24 parent and the child. The court shall award sole custody when it
25 is in the best interest of the child.

26 § 5304. Award of shared custody.

27 An order for shared custody may be awarded by the court when
28 it is in the best interest of the child:

29 (1) upon application of one or both parents;

30 (2) when the parties have agreed to an award of shared

1 custody; or

2 (3) in the discretion of the court.

3 § 5305. Counseling.

4 (a) General rule.--The court may require the parents to
5 attend counseling sessions and may consider the recommendations
6 of the counselors prior to awarding sole or shared custody.
7 These counseling sessions may include but shall not be limited
8 to discussions of the responsibilities and decision making
9 arrangements involved in both sole and shared custody and the
10 suitability of each arrangement to the capabilities of each
11 parent or both parents.

12 (b) Temporary custody.--The court may temporarily award
13 custody to either parent or both parents pending resolution of
14 any counseling.

15 (c) Report.--The court may require the counselor to submit a
16 report if the court desires and within such reasonable time as
17 the court determines.

18 § 5306. Plan for implementation of custody order.

19 The court, in its discretion, may require the parents to
20 submit to the court a plan for the implementation of any custody
21 order made pursuant to this subchapter. Upon the request of
22 either parent or the court, the domestic relations section of
23 the court or other party or agency approved by the court shall
24 assist in the formulation and implementation of the plan.

25 § 5307. Denial of custody under agreement or plan.

26 When the court declines to enter an order awarding custody
27 either as agreed to by the parents or under the plan developed
28 by the parents, the court shall state its reasons for denial on
29 the record.

30 § 5308. Removal of party or child from jurisdiction.

1 If either party intends to or does leave this Commonwealth or
2 intends to or does remove the child from this Commonwealth after
3 a custody order has been made, the court, on its own motion or
4 at the request of either party, may review the existing custody
5 order.

6 § 5309. Access to records and information.

7 (a) General rule.--Except as provided in subsections (b) and
8 (c), each parent shall be provided access to all the medical,
9 dental, religious or school records of the child, the residence
10 address of the child and of the other parent and any other
11 information that the court deems necessary.

12 (b) Court determination not to release information.--The
13 court, in its discretion, may determine not to release any part
14 or parts of the information in this section but in doing so must
15 state its reason for denial on the record.

16 (c) Nondisclosure of confidential records.--The court shall
17 not order that the address of a shelter for battered spouses and
18 their dependent children or otherwise confidential records of a
19 domestic violence counselor be disclosed to any party or counsel
20 for any party to the proceedings.

21 § 5310. Modification of existing custody orders.

22 Any order for the custody of the child of a marriage entered
23 by a court in this Commonwealth or another state may, subject to
24 the jurisdictional requirements set forth in sections 5342
25 (relating to purposes and construction of subchapter) and 5344
26 (relating to jurisdiction), be modified at any time to an order
27 of shared custody in accordance with this subchapter.

28 § 5311. Visitation rights of grandparents.

29 (a) When parent deceased.--If a parent of an unmarried child
30 is deceased, the court may grant the parents or grandparents of

1 the deceased parent reasonable visitation rights to the
2 unmarried child upon a finding that visitation rights would be
3 in the best interest of the child and would not interfere with
4 the parent-child relationship. The court shall consider the
5 amount of personal contact between the parents or grandparents
6 of the deceased parent and the child prior to the application
7 for visitation rights.

8 (b) When marriage of parents dissolved.--In all proceedings
9 for dissolution of the marriage, subsequent to the commencement
10 of the proceeding and continuing thereafter, the court may, upon
11 the request of the parent or grandparent of a party, grant
12 reasonable visitation rights to the unmarried child, after
13 dissolution of the marriage, if it finds that visitation rights
14 would be in the best interest of the child and would not
15 interfere with the parent-child relationship. The court shall
16 consider the amount of personal contact between the parents or
17 grandparents of the party and the child prior to the application
18 for visitation rights.

19 (c) When child resided with grandparents.--If an unmarried
20 child has resided with his grandparents or great-grandparents
21 for a period of 12 months or more and is subsequently removed
22 from the home by his parents, the grandparents or great-
23 grandparents may petition the court for an order granting them
24 reasonable visitation rights to the child. The court shall grant
25 the petition if it finds that visitation rights would be in the
26 best interest of the child and would not interfere with the
27 parent-child relationship.

28 (d) Exception for adopted children.--This section does not
29 apply if the child has been adopted by a person other than a
30 stepparent or grandparent. Any visitation rights granted

1 pursuant to this section prior to the adoption of the child
2 shall be automatically terminated upon such adoption.

3 SUBCHAPTER B

4 CHILD CUSTODY JURISDICTION

5 Sec.

6 5341. Short title of subchapter.

7 5342. Purposes and construction of subchapter.

8 5343. Definitions.

9 5344. Jurisdiction.

10 5345. Notice and opportunity to be heard.

11 5346. Notice to persons outside this Commonwealth; submission
12 to jurisdiction.

13 5347. Simultaneous proceedings in other states.

14 5348. Inconvenient forum.

15 5349. Jurisdiction declined by reason of conduct.

16 5350. Information under oath to be submitted to the court.

17 5351. Additional parties.

18 5352. Appearance of parties and the child.

19 5353. Binding force and res judicata effect of custody decree.

20 5354. Recognition of out-of-state custody decrees.

21 5355. Modification of custody decree of another state.

22 5356. Filing and enforcement of custody decree of another
23 state.

24 5357. Registry of out-of-state custody decrees and proceedings.

25 5358. Certified copies of custody decree.

26 5359. Taking testimony in another state.

27 5360. Hearings and studies in another state; orders to appear.

28 5361. Assistance to courts of other states.

29 5362. Preservation of documents for use in other states.

30 5363. Request for court records of another state.

1 5364. Intrastate application.

2 5365. International application.

3 5366. Priority.

4 § 5341. Short title of subchapter.

5 This subchapter shall be known and may be cited as the
6 "Uniform Child Custody Jurisdiction Act."

7 § 5342. Purposes and construction of subchapter.

8 (a) Purposes.--The general purposes of this subchapter are
9 to:

10 (1) Avoid jurisdictional competition and conflict with
11 courts of other states in matters of child custody which have
12 in the past resulted in the shifting of children from state
13 to state with harmful effects on their well-being.

14 (2) Promote cooperation with the courts of other states
15 to the end that a custody decree is rendered in that state
16 which can best decide the case in the interest of the child.

17 (3) Assure that litigation concerning the custody of a
18 child takes place ordinarily in the state with which the
19 child and his family have the closest connection and where
20 significant evidence concerning his care, protection,
21 training, and personal relationships is most readily
22 available, and that courts of this Commonwealth decline the
23 exercise of jurisdiction when the child and his family have a
24 closer connection with another state.

25 (4) Discourage continuing controversies over child
26 custody in the interest of greater stability of home
27 environment and of secure family relationships for the child.

28 (5) Deter abductions and other unilateral removals of
29 children undertaken to obtain custody awards.

30 (6) Avoid relitigation of custody decisions of other

1 states in this Commonwealth insofar as feasible.

2 (7) Facilitate the enforcement of custody decrees of
3 other states.

4 (8) Promote and expand the exchange of information and
5 other forms of mutual assistance between the courts of this
6 Commonwealth and those of other states concerned with the
7 same child.

8 (b) Construction.--This subchapter shall be construed to
9 promote the general purposes stated in this section.

10 § 5343. Definitions.

11 The following words and phrases when used in this subchapter
12 shall have, unless the context clearly indicates otherwise, the
13 meanings given to them in this section:

14 "Contestant." An institution or an individual, including a
15 parent, who claims a right to custody or visitation rights with
16 respect to a child.

17 "Custody determination." A court decision and court orders
18 and instructions providing for the custody of a child, including
19 visitation rights; the term does not include a decision relating
20 to child support or any other monetary obligation of any person.

21 "Custody proceeding." Includes proceedings in which a
22 custody determination is one of several issues, such as an
23 action for divorce or separation, and includes child neglect and
24 dependency proceedings.

25 "Decree" or "custody decree." A custody determination
26 contained in a judicial decree or order made in a custody
27 proceeding, and includes an initial decree and a modification
28 decree.

29 "Home state." The state in which the child immediately
30 preceding the time involved lived with his parents, a parent, or

1 a person acting as parent, or in an institution, for at least
2 six consecutive months, and in the case of a child less than six
3 months old the state in which the child lived from birth with
4 any of the persons mentioned. Periods of temporary absence of
5 any of the named persons are counted as part of the six-month or
6 other period.

7 "Initial decree." The first custody decree concerning a
8 particular child.

9 "Modification decree." A custody decree which modifies or
10 replaces a prior decree, whether made by the court which
11 rendered the prior decree or by another court.

12 "Person acting as parent." A person, including an
13 institution other than a parent, who has physical custody of a
14 child and who has either been awarded custody by a court or
15 claims a right to custody.

16 "Physical custody." Actual possession and control of a
17 child.

18 § 5344. Jurisdiction.

19 (a) General rule.--A court of this Commonwealth which is
20 competent to decide child custody matters has jurisdiction to
21 make a child custody determination by initial or modification
22 decree if:

23 (1) this Commonwealth:

24 (i) is the home state of the child at the time of
25 commencement of the proceeding; or

26 (ii) had been the home state of the child within six
27 months before commencement of the proceeding and the
28 child is absent from this Commonwealth because of his
29 removal or retention by a person claiming his custody or
30 for other reasons, and a parent or person acting as

1 parent continues to live in this Commonwealth;

2 (2) it is in the best interest of the child that a court
3 of this Commonwealth assume jurisdiction because:

4 (i) the child and his parents, or the child and at
5 least one contestant, have a significant connection with
6 this Commonwealth; and

7 (ii) there is available in this Commonwealth
8 substantial evidence concerning the present or future
9 care, protection, training, and personal relationships of
10 the child;

11 (3) the child is physically present in this
12 Commonwealth, and:

13 (i) the child has been abandoned; or

14 (ii) it is necessary in an emergency to protect the
15 child because he has been subjected to or threatened with
16 mistreatment or abuse or is otherwise neglected or
17 dependent;

18 (4) (i) it appears that no other state would have
19 jurisdiction under prerequisites substantially in
20 accordance with paragraph (1), (2) or (3), or another
21 state has declined to exercise jurisdiction on the ground
22 that this Commonwealth is the more appropriate forum to
23 determine the custody of the child; and

24 (ii) it is in the best interest of the child that
25 the court assume jurisdiction; or

26 (5) the child welfare agencies of the counties wherein
27 the contestants for the child live, have made an
28 investigation of the home of the person to whom custody is
29 awarded and have found it to be satisfactory for the welfare
30 of the child.

1 (b) Physical presence insufficient.--Except under subsection
2 (a)(3) and (4), physical presence in this Commonwealth of the
3 child, or of the child and one of the contestants, is not alone
4 sufficient to confer jurisdiction on a court of this
5 Commonwealth to make a child custody determination.

6 (c) Physical presence unnecessary.--Physical presence of the
7 child, while desirable, is not a prerequisite for jurisdiction
8 to determine his custody.

9 § 5345. Notice and opportunity to be heard.

10 Before making a decree under this subchapter, reasonable
11 notice and opportunity to be heard shall be given to the
12 contestants, any parent whose parental rights have not been
13 previously terminated and any person who has physical custody of
14 the child. If any of these persons is outside this Commonwealth,
15 notice and opportunity to be heard shall be given pursuant to
16 section 5346 (relating to notice to persons outside this
17 Commonwealth; submission to jurisdiction).

18 § 5346. Notice to persons outside this Commonwealth; submission
19 to jurisdiction.

20 (a) General rule.--Notice required for the exercise of
21 jurisdiction over a person outside this Commonwealth shall be
22 given in a manner reasonably calculated to give actual notice,
23 and may be:

24 (1) by personal delivery outside this Commonwealth in
25 the manner prescribed for service of process within this
26 Commonwealth;

27 (2) in the manner prescribed by the law of the place in
28 which the service is made for service of process in that
29 place in an action in any of its courts of general
30 jurisdiction;

1 (3) by any form of mail addressed to the person to be
2 served and requesting a receipt; or

3 (4) as directed by the court including publication, if
4 other means of notification are ineffective.

5 (b) Duration.--Notice under this section shall be served,
6 mailed, or delivered or last published at least ten days before
7 any hearing in this Commonwealth.

8 (c) Proof of service.--Proof of service outside this
9 Commonwealth may be made by affidavit of the individual who made
10 the service, or in the manner prescribed by the law of this
11 Commonwealth, the order pursuant to which the service is made,
12 or the law of the place in which the service is made. If service
13 is made by mail, proof may be a receipt signed by the addressee
14 or other evidence of delivery to the addressee.

15 (d) Submission to jurisdiction.--Notice is not required if a
16 person submits to the jurisdiction of the court.

17 § 5347. Simultaneous proceedings in other states.

18 (a) General rule.--A court of this Commonwealth shall not
19 exercise its jurisdiction under this subchapter if at the time
20 of filing the petition a proceeding concerning the custody of
21 the child was pending in a court of another state exercising
22 jurisdiction substantially in conformity with this subchapter,
23 unless the proceeding is stayed by the court of the other state
24 because this Commonwealth is a more appropriate forum or for
25 other reasons.

26 (b) Procedure.--Before hearing the petition in a custody
27 proceeding the court shall examine the pleadings and other
28 information supplied by the parties under section 5350 (relating
29 to information under oath to be submitted to the court) and
30 shall consult the child custody registry established under

1 section 5357 (relating to registry of out-of-state custody
2 decrees and proceedings) concerning the pendency of proceedings
3 with respect to the child in other states. If the court has
4 reason to believe that proceedings may be pending in another
5 state it shall direct an inquiry to the state court
6 administrator or other appropriate official of the other state.

7 (c) Stay; communication with other court.--If the court is
8 informed during the course of the proceeding that a proceeding
9 concerning the custody of the child was pending in another state
10 before the court assumed jurisdiction it shall stay the
11 proceeding and communicate with the court in which the other
12 proceeding is pending to the end that the issue may be litigated
13 in the more appropriate forum and that information be exchanged
14 in accordance with sections 5360 (relating to hearings and
15 studies in another state; orders to appear) through 5363
16 (relating to request for court records of another state). If a
17 court of this Commonwealth has made a custody decree before
18 being informed of a pending proceeding in a court of another
19 state it shall immediately inform that court of the fact. If the
20 court is informed that a proceeding was commenced in another
21 state after it assumed jurisdiction it shall likewise inform the
22 other court to the end that the issues may be litigated in the
23 more appropriate forum.

24 § 5348. Inconvenient forum.

25 (a) General rule.--A court which has jurisdiction under this
26 subchapter to make an initial or modification decree may decline
27 to exercise its jurisdiction any time before making a decree if
28 it finds that it is an inconvenient forum to make a custody
29 determination under the circumstances of the case and that a
30 court of another state is a more appropriate forum.

1 (b) Moving party.--A finding of inconvenient forum may be
2 made upon the court's own motion or upon motion of a party or a
3 guardian ad litem or other representative of the child.

4 (c) Factors to be considered.--In determining if it is an
5 inconvenient forum, the court shall consider if it is in the
6 interest of the child that another state assume jurisdiction.
7 For this purpose it may take into account the following factors,
8 among others:

9 (1) If another state is or recently was the home state
10 of the child.

11 (2) If another state has a closer connection with the
12 child and his family or with the child and one or more of the
13 contestants.

14 (3) If substantial evidence concerning the present or
15 future care, protection, training, and personal relationships
16 of the child is more readily available in another state.

17 (4) If the parties have agreed on another forum which is
18 no less appropriate.

19 (5) If the exercise of jurisdiction by a court of this
20 Commonwealth would contravene any of the purposes stated in
21 section 5342 (relating to purposes and construction of
22 subchapter).

23 (d) Communication with other court.--Before determining
24 whether to decline or retain jurisdiction the court may
25 communicate with a court of another state and exchange
26 information pertinent to the assumption of jurisdiction by
27 either court with a view to assuring that jurisdiction will be
28 exercised by the more appropriate court and that a forum will be
29 available to the parties.

30 (e) Disposition.--If the court finds that it is an

1 inconvenient forum and that a court of another state is a more
2 appropriate forum it may dismiss the proceedings, or it may stay
3 the proceedings upon condition that a custody proceeding be
4 promptly commenced in another named state or upon any other
5 conditions which may be just and proper, including the condition
6 that a moving party stipulate his consent and submission to the
7 jurisdiction of the other forum.

8 (f) Effect on divorce or other proceeding.--The court may
9 decline to exercise its jurisdiction under this subchapter if a
10 custody determination is incidental to an action for divorce or
11 another proceeding while retaining jurisdiction over the divorce
12 or other proceeding.

13 (g) Costs and expenses.--Subject to general rules:

14 (1) If it appears to the court that it is clearly an
15 inappropriate forum it may require the party who commenced
16 the proceedings to pay, in addition to the costs of the
17 proceedings in this Commonwealth, necessary travel and other
18 expenses, including attorneys' fees, incurred by other
19 parties or their witnesses.

20 (2) Payment is to be made to the office of the clerk of
21 the court of common pleas for remittance to the proper party.

22 (h) Notice of disposition.--Upon dismissal or stay of
23 proceedings under this section the court shall inform the court
24 found to be the more appropriate forum of this fact, or if the
25 court which would have jurisdiction in the other state is not
26 certainly known, shall transmit the information to the court
27 administrator or other appropriate official of the other state
28 for forwarding to the appropriate court.

29 (i) Registry of out-of-state stay; notice of assumption of
30 jurisdiction.--Any communication received from another state

1 informing this Commonwealth of a finding of inconvenient forum
2 because a court of this Commonwealth is the more appropriate
3 forum shall be filed in the custody registry of the appropriate
4 court. Upon assuming jurisdiction the court of this Commonwealth
5 shall inform the original court of this fact.

6 § 5349. Jurisdiction declined by reason of conduct.

7 (a) General rule.--If the petitioner for an initial decree
8 has wrongfully taken the child from another state or has engaged
9 in conduct intending to benefit his position in a custody
10 hearing, the court may decline to exercise jurisdiction if this
11 is just and proper under the circumstances.

12 (b) Restriction on modification of foreign decree.--Unless
13 required in the interest of the child, the court shall not
14 exercise its jurisdiction to modify a custody decree of another
15 state if the petitioner, without consent of the person entitled
16 to custody, has improperly removed the child from the physical
17 custody of the person entitled to custody or has improperly
18 retained the child after a visit or other temporary
19 relinquishment of physical custody. If the petitioner has
20 violated any other provision of a custody decree of another
21 state the court may decline to exercise its jurisdiction unless
22 the petitioner can show that conditions in the custodial
23 household are physically or emotionally harmful to the child,
24 the burden of proof being on the petitioner requesting the court
25 to take jurisdiction.

26 (c) Costs and expenses.--Subject to general rules, in
27 appropriate cases a court dismissing a petition under this
28 section may charge the petitioner with necessary travel and
29 other expenses, including attorneys' fees, incurred by other
30 parties or their witnesses.

1 § 5350. Information under oath to be submitted to the court.

2 (a) General rule.--Every party in a custody proceeding in
3 his first pleading or in an affidavit attached to that pleading
4 shall give information under oath as to the present address of
5 the child, the places where the child has lived within the last
6 five years, and the names and present addresses of the persons
7 with whom the child has lived during that period. In this
8 pleading or affidavit every party shall further declare under
9 oath whether:

10 (1) he has participated (as a party, witness, or in any
11 other capacity) in any other litigation concerning the
12 custody of the same child in this or any other state;

13 (2) he has information of any custody proceeding
14 concerning the child pending in a court of this or any other
15 state; and

16 (3) he knows of any person not a party to the
17 proceedings who has physical custody of the child or claims
18 to have custody or visitation rights with respect to the
19 child.

20 (b) Additional information.--If the declaration as to any of
21 the items set forth in subsection (a) is in the affirmative the
22 declarant shall give additional information under oath as
23 required by the court. The court may examine the parties under
24 oath as to details of the information furnished and as to other
25 matters pertinent to the jurisdiction of the court and the
26 disposition of the case.

27 (c) Continuing duty.--Each party has a continuing duty to
28 inform the court of any custody proceeding concerning the child
29 in this Commonwealth or any other state of which he obtained
30 information during proceedings under this subchapter.

1 § 5351. Additional parties.

2 If the court learns from information furnished by the parties
3 pursuant to section 5350 (relating to information under oath to
4 be submitted to the court) or from other sources that a person
5 not a party to the custody proceeding has physical custody of
6 the child or claims to have custody or visitation rights with
7 respect to the child, it shall order that person to be joined as
8 a party and to be duly notified of the pendency of the
9 proceeding and of his joinder as a party. If the person joined
10 as a party is outside this Commonwealth he shall be served with
11 process or otherwise notified in accordance with section 5346
12 (relating to notice to persons outside this Commonwealth;
13 submission to jurisdiction).

14 § 5352. Appearance of parties and the child.

15 (a) General rule.--The court may order any party to the
16 proceeding who is in this Commonwealth to appear personally
17 before the court. If that party has physical custody of the
18 child the court may order that he appear personally with the
19 child.

20 (b) Out-of-state persons.--If a party to the proceeding
21 whose presence is desired by the court is outside this
22 Commonwealth with or without the child the court may order that
23 the notice given under section 5346 (relating to notice to
24 persons outside this Commonwealth; submission to jurisdiction)
25 include a statement directing that party to appear personally
26 with or without the child and declaring that failure to appear
27 may result in a decision adverse to that party.

28 (c) Costs and expenses.--If a party to the proceeding who is
29 outside this Commonwealth is directed to appear under subsection
30 (b) or desires to appear personally before the court with or

1 without the child, the court may require another party to pay
2 travel and other necessary expenses of the party so appearing
3 and of the child if this is just and proper under the
4 circumstances.

5 § 5353. Binding force and res judicata effect of custody
6 decree.

7 A custody decree rendered by a court of this Commonwealth
8 which had jurisdiction under section 5344 (relating to
9 jurisdiction) binds all parties who have been served in this
10 Commonwealth or notified in accordance with section 5346
11 (relating to notice to persons outside this Commonwealth;
12 submission to jurisdiction) or who have submitted to the
13 jurisdiction of the court, and who have been given an
14 opportunity to be heard. As to these parties the custody decree
15 is conclusive as to all issues of law and fact decided and as to
16 the custody determination made unless and until that
17 determination is modified pursuant to law, including the
18 provisions of this subchapter.

19 § 5354. Recognition of out-of-state custody decrees.

20 The courts of this Commonwealth shall recognize and enforce
21 an initial or modification decree of a court of another state
22 which had assumed jurisdiction under statutory provisions
23 substantially in accordance with this subchapter or which was
24 made under factual circumstances meeting the jurisdictional
25 standards of this subchapter, so long as the decree has not been
26 modified in accordance with jurisdictional standards
27 substantially similar to those of this subchapter.

28 § 5355. Modification of custody decree of another state.

29 (a) General rule.--If a court of another state has made a
30 custody decree, a court of this Commonwealth shall not modify

1 that decree unless:

2 (1) it appears to the court of this Commonwealth that
3 the court which rendered the decree does not now have
4 jurisdiction under jurisdictional prerequisites substantially
5 in accordance with this subchapter or has declined to assume
6 jurisdiction to modify the decree; and

7 (2) the court of this Commonwealth has jurisdiction.

8 (b) Consideration of out-of-state record.--If a court of
9 this Commonwealth is authorized under subsection (a) and section
10 5349 (relating to jurisdiction declined by reason of conduct) to
11 modify a custody decree of another state it shall give due
12 consideration to the transcript of the record and other
13 documents of all previous proceedings submitted to it in
14 accordance with section 5363 (relating to request for court
15 records of another state).

16 § 5356. Filing and enforcement of custody decree of another
17 state.

18 (a) General rule.--A certified copy of a custody decree of
19 another state whose decrees are recognized under section 5354
20 (relating to recognition of out-of-state custody decrees) may be
21 filed in any office of the clerk of the court of common pleas of
22 this Commonwealth. The clerk shall treat the decree in the same
23 manner as a custody decree of a court of common pleas of this
24 Commonwealth. A custody decree so filed has the same effect and
25 shall be enforced in like manner as a custody decree rendered by
26 a court of this Commonwealth.

27 (b) Costs and expenses.--A person violating a custody decree
28 of another state which makes it necessary to enforce the decree
29 in this Commonwealth may be required to pay necessary travel and
30 other expenses, including attorneys' fees, incurred by the party

1 entitled to the custody or his witnesses.

2 § 5357. Registry of out-of-state custody decrees and
3 proceedings.

4 Each office of the clerk of the court of common pleas shall
5 maintain a registry in which it shall enter the following:

6 (1) Certified copies of custody decrees of other states
7 received for filing.

8 (2) Communications as to the pendency of custody
9 proceedings in other states.

10 (3) Communications concerning a finding of inconvenient
11 forum by a court of another state.

12 (4) Other communications or documents concerning custody
13 proceedings in another state which may affect the
14 jurisdiction of a court of this Commonwealth or the
15 disposition to be made by it in a custody proceeding.

16 § 5358. Certified copies of custody decree.

17 The office of the clerk of the court of common pleas, at the
18 request of the court of another state or at the request of any
19 person who is affected by or has a legitimate interest in a
20 custody decree, shall certify and forward a copy of the decree
21 to that court or person.

22 § 5359. Taking testimony in another state.

23 In addition to other procedural devices available to a party,
24 any party to the proceeding or a guardian ad litem or other
25 representative of the child may adduce testimony of witnesses,
26 including parties and the child, by deposition or otherwise, in
27 another state. The court on its own motion may direct that the
28 testimony of a person be taken in another state and may
29 prescribe the manner in which and the terms upon which the
30 testimony shall be taken.

1 § 5360. Hearings and studies in another state; orders to
2 appear.

3 (a) Hearings and studies.--A court of this Commonwealth may
4 request the appropriate court of another state to hold a hearing
5 to adduce evidence, to order a party to produce or give evidence
6 under other procedures of that state, or to have social studies
7 made with respect to the custody of a child involved in
8 proceedings pending in the court of this Commonwealth; and to
9 forward to the court of this Commonwealth certified copies of
10 the transcript of the record of the hearing, the evidence
11 otherwise adduced, or any social studies prepared in compliance
12 with the request. Subject to general rules, the cost of the
13 services may be assessed against the parties or, if necessary,
14 ordered paid by the county.

15 (b) Order to appear.--A court of this Commonwealth may
16 request the appropriate court of another state to order a party
17 to custody proceedings pending in the court of this Commonwealth
18 to appear in the proceedings, and if that party has physical
19 custody of the child, to appear with the child. The request may
20 state that travel and other necessary expenses of the party and
21 of the child whose appearance is desired will be assessed
22 against another party or will otherwise be paid.

23 § 5361. Assistance to courts of other states.

24 (a) General rule.--Upon request of the court of another
25 state the courts of this Commonwealth which are competent to
26 hear custody matters may order a person in this Commonwealth to
27 appear at a hearing to adduce evidence or to produce or give
28 evidence under other procedures available in this Commonwealth
29 or may order social studies to be made for use in a custody
30 proceeding in another state. A certified copy of the transcript

1 of the record of the hearing or the evidence otherwise adduced,
2 any psychological studies and any social studies prepared shall
3 be forwarded to the requesting court.

4 (b) Voluntary testimony.--A person within this Commonwealth
5 may voluntarily give his testimony or statement in this
6 Commonwealth for use in a custody proceeding outside this
7 Commonwealth.

8 (c) Appearance in other state.--Upon request of the court of
9 another state a competent court of this Commonwealth may order a
10 person in this Commonwealth to appear alone or with the child in
11 a custody proceeding in another state. The court may condition
12 compliance with the request upon assurance by the other state
13 that travel and other necessary expenses will be advanced or
14 reimbursed.

15 § 5362. Preservation of documents for use in other states.

16 In any custody proceeding in this Commonwealth the court
17 shall preserve the pleadings, orders and decrees, any record
18 that has been made of its hearings, social studies, and other
19 pertinent documents until the child reaches 18 years of age.
20 Upon appropriate request of the court of another state the court
21 shall forward to the other court certified copies of any or all
22 of such documents.

23 § 5363. Request for court records of another state.

24 If a custody decree has been rendered in another state
25 concerning a child involved in a custody proceeding pending in a
26 court of this Commonwealth, the court of this Commonwealth upon
27 taking jurisdiction of the case shall request of the court of
28 the other state a certified copy of the transcript of any court
29 record and other documents mentioned in section 5362 (relating
30 to preservation of documents for use in other states).

1 § 5364. Intrastate application.

2 (a) General rule.--Except as otherwise provided in this
3 section, the provisions of this subchapter allocating
4 jurisdiction and functions between and among courts of different
5 states shall also allocate jurisdiction and functions between
6 and among the courts of common pleas of this Commonwealth.

7 (b) Home jurisdiction.--For the purposes of the definition
8 of "home state" in section 5343 (relating to definitions) a
9 period of temporary absence of the child from the physical
10 custody of the parent, person acting as parent or institution
11 shall not affect the six months or other period.

12 (c) Petitioner.--As used in this subchapter insofar as
13 relates to the allocation of jurisdiction and functions between
14 and among the courts of common pleas of this Commonwealth, the
15 term "petitioner" means anyone seeking change in the status of
16 custody of a child either by an affirmative action brought in a
17 court or as a defense to a custody action brought by a person
18 acting as parent who had previously been awarded custody of the
19 child.

20 (d) Effect of agency investigation.--Section 5344(a)(5)
21 (relating to jurisdiction) shall not be applicable for the
22 purposes of this section.

23 (e) Period of notice.--Notice under section 5346 (relating
24 to notice to persons outside this Commonwealth; submission to
25 jurisdiction) shall be served, mailed, delivered or last
26 published at least 20 days before any hearing.

27 (f) Jurisdiction declined by reason of conduct.--

28 (1) If it is just and proper under the circumstances,
29 when the petitioner for an initial decree has wrongfully
30 taken the child from another jurisdiction or has engaged in

1 improper conduct intending to benefit his position in a
2 custody proceeding, upon presentation of the petition, the
3 court shall decline to exercise jurisdiction or shall
4 exercise jurisdiction only to issue an order, pending a full
5 hearing in the appropriate jurisdiction, returning the
6 parties to the custodial status quo existing prior to the
7 improper conduct or wrongful taking unless the petitioner can
8 show that conditions in the former custodial household are
9 physically or emotionally harmful to the child.

10 (2) Unless required in the interest of the child, the
11 court shall not exercise its jurisdiction to modify a custody
12 decree of another court if the petitioner, without consent of
13 the person entitled to custody has:

14 (i) improperly removed the child from the physical
15 custody of the person entitled to custody;

16 (ii) improperly retained the child after a visit or
17 other temporary relinquishment of physical custody; or

18 (iii) removed the child from the jurisdiction of the
19 court entering the decree without 20 days written notice
20 to the court entering the decree and any party entitled
21 to custody or visitation rights under the terms of the
22 decree.

23 If the petitioner has violated any provision of a custody
24 decree of another court, the court shall decline to exercise
25 its jurisdiction unless the contestant can show that
26 conditions in the custodial household are physically or
27 emotionally harmful to the child. The burden of proof on this
28 issue is on the contestant requesting the court to take
29 jurisdiction.

30 (3) Subject to general rules, in appropriate cases a

1 court dismissing a petition under this subsection may charge
2 the petitioner with necessary travel and other expenses,
3 including attorneys' fees, incurred by other parties or their
4 witnesses.

5 (g) Statewide orders.--A court may under section 5352(a)
6 (relating to appearance of parties and the child) issue orders
7 to any party to the proceeding who is in any judicial district
8 of this Commonwealth.

9 (h) Modification of custody decrees.--

10 (1) If another court has made a custody decree, a court
11 before which a petition for modification is pending shall not
12 modify the decree of the other court unless it appears to the
13 court before which the petition is pending that the other
14 court which rendered the decree does not have jurisdiction
15 under jurisdictional prerequisites substantially in
16 accordance with this subchapter or has declined to assume
17 jurisdiction to modify its decree and the provisions of
18 subsection (f)(2) will not be violated by an exercise of
19 jurisdiction by the court before which the petition is
20 pending.

21 (2) If a court of this Commonwealth is authorized under
22 paragraph (1) to modify a custody decree of another court it
23 shall give due consideration to the transcript of the record
24 and other documents of all previous proceedings submitted to
25 it in accordance with section 5363 (relating to request for
26 court records of another state).

27 § 5365. International application.

28 The general policies of this subchapter extend to the
29 international area. The provisions of this subchapter relating
30 to the recognition and enforcement of custody decrees of other

1 states apply to custody decrees and decrees involving legal
2 institutions similar in nature to custody institutions rendered
3 by appropriate authorities of other nations if reasonable notice
4 and opportunity to be heard were given to all affected persons.
5 § 5366. Priority.

6 Upon the request of a party to a custody proceeding which
7 raises a question of existence or exercise of jurisdiction under
8 this subchapter the case shall be given calendar priority and
9 handled expeditiously.

10 CHAPTER 55

11 LIABILITY FOR TORTIOUS ACTS OF CHILDREN

12 Sec.

13 5501. Definitions.

14 5502. Liability of parents.

15 5503. Establishing liability in criminal or juvenile
16 proceedings.

17 5504. Establishing liability in civil proceedings.

18 5505. Monetary limits of liability.

19 5506. Double recovery for same injury prohibited.

20 5507. Indemnity or contribution from child prohibited.

21 5508. Liability of parent not having custody or control of
22 child.

23 5509. Other liability of parent or child unaffected.

24 § 5501. Definitions.

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

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

29 "Injury." Includes injury to the person and theft,
30 destruction or loss of property.

1 "Parent." Includes natural or adoptive parents.

2 "Person." Includes government units and Federal agencies.

3 "Tortious act." A willful tortious act resulting in injury.

4 § 5502. Liability of parents.

5 Any parent whose child is found liable or is adjudged guilty
6 by a court of competent jurisdiction of a tortious act shall be
7 liable to the person who suffers the injury to the extent set
8 forth in this chapter.

9 § 5503. Establishing liability in criminal or juvenile
10 proceedings.

11 (a) General rule.--In any criminal proceeding against a
12 child and in any proceeding against a child under Chapter 63 of
13 Title 42 (relating to juvenile matters), the court shall
14 ascertain the amount sufficient to fully reimburse any person
15 who has suffered injury because of the tortious act of the child
16 and direct the parents to make payment in the amount not to
17 exceed the limitations set forth in section 5505 (relating to
18 monetary limits of liability).

19 (b) Noncompliance with direction of court.--If the parents
20 fail to comply with the direction of the court, the amount may
21 be recovered in a civil action against the parents or either of
22 them.

23 § 5504. Establishing liability in civil proceedings.

24 (a) Petition.--If a judgment has been rendered against the
25 child in a civil action for injury because of the tortious act
26 of the child and the judgment has not been satisfied within a
27 period of 30 days, the injured person may petition the court for
28 a rule to show cause why judgment should not be entered against
29 the parent.

30 (b) Answer and trial.--The parent may file an answer to the

1 petition and, if there is any dispute as to unlitigated facts,
2 the case shall be set down for trial.

3 (c) Judgment.--If there is no dispute as to the unlitigated
4 facts, the court shall authorize the entry of a judgment against
5 the parent. In no case shall the judgment against the parent
6 exceed the limitations set forth in section 5505 (relating to
7 monetary limits of liability).

8 § 5505. Monetary limits of liability.

9 (a) General rule.--Liability of the parents under this
10 chapter shall be limited to:

11 (1) The sum of \$300 for injuries suffered by any one
12 person as a result of one tortious act or continuous series
13 of tortious acts.

14 (2) The sum of \$1,000 regardless of the number of
15 persons who suffer injury as a result of one tortious act or
16 continuous series of tortious acts.

17 (b) Proceedings where loss exceeds liability.--In the event
18 that actual loss as ascertained by the court or the judgment
19 against the child exceeds \$1,000, the parents shall be
20 discharged from further liability by the payment of \$1,000 into
21 court. The court shall cause all aggrieved parties to submit
22 itemized statements of loss in writing and shall make
23 distribution proportionately, whether the claims be for injuries
24 to the person or for theft, destruction or loss of property. The
25 court may take testimony to assist it in making proper
26 distribution and may appoint a master to accomplish this
27 purpose. All costs and fees incurred in these proceedings shall
28 be paid from the \$1,000 paid into court.

29 (c) Joint acts by children of same parent.--The limitations
30 on liability set forth in subsections (a) and (b) shall be

1 applicable when two or more children of the same parent engage
2 jointly in the commission of one tortious act or series of
3 tortious acts.

4 § 5506. Double recovery for same injury prohibited.

5 In no case shall there be a double recovery for one injury.
6 Any judgment against a child resulting from a tortious act for
7 which a parent makes payment under this chapter shall be reduced
8 by the amount paid by the parent.

9 § 5507. Indemnity or contribution from child prohibited.

10 The parent shall have no right of indemnity or contribution
11 against the child.

12 § 5508. Liability of parent not having custody or control of
13 child.

14 (a) General rule.--No liability may be imposed upon a parent
15 under this chapter if at the time of commission of the tortious
16 act the parent has neither custody of the child nor is entitled
17 to custody of the child or if the child is institutionalized or
18 emancipated.

19 (b) Exception.--No parent is absolved of liability due to
20 the desertion of the child by the parent.

21 § 5509. Other liability of parent or child unaffected.

22 The liability imposed upon parents by this chapter shall not
23 limit the common law liability of parents for damages caused by
24 a child and shall be separate and apart from any liability which
25 may be imposed upon the child.

26 PART VII

27 ABUSE OF FAMILY

28 Chapter

29 61. Protection From Abuse

30 63. Child Protective Services

CHAPTER 61

PROTECTION FROM ABUSE

Sec.

6101. Short title of chapter.

6102. Definitions.

6103. Effect of departure to avoid abuse.

6104. Commencement of proceedings.

6105. Hearings.

6106. Relief.

6107. Service of orders.

6108. Emergency relief by minor judiciary.

6109. Arrest for violation of order.

6110. Contempt for violation of order or agreement.

6111. Procedure and other remedies.

§ 6101. Short title of chapter.

This chapter shall be known and may be cited as the
"Protection From Abuse Act."

§ 6102. 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." The occurrence of one or more of the following acts
between family or household members who reside together or
family and household members who formerly resided together and
both parties continue to have legal access to the residence:

(1) Attempting to cause or intentionally, knowingly or
recklessly causing bodily injury or serious bodily injury
with or without a deadly weapon.

(2) Placing by physical menace another in fear of
imminent serious bodily injury.

1 (3) Sexually abusing minor children.

2 "Adult." An individual who is 18 years of age or older.

3 "Family or household members." Spouses, persons living as
4 spouses, parents and children, or other persons related by
5 consanguinity or affinity.

6 "Minor." An individual who is not an adult.

7 § 6103. Effect of departure to avoid abuse.

8 The right of plaintiff to relief under this chapter shall not
9 be affected by plaintiff leaving the residence or household to
10 avoid further abuse.

11 § 6104. Commencement of proceedings.

12 (a) General rule.--A person may seek relief under this
13 chapter for that person or any parent or adult household member
14 may seek relief under this chapter on behalf of minor children
15 by filing a petition with the court alleging abuse by the
16 defendant.

17 (b) Affidavit of insufficient funds for fees.--If the
18 plaintiff files an affidavit stating that plaintiff does not
19 have funds available to pay the fees for filing and service, the
20 petition shall be filed and service shall be made without
21 payment of fees and leave of court to proceed in forma pauperis
22 shall not be required.

23 (c) Determination of indigency.--When the petition is filed
24 without payment of fees, the court shall determine at the
25 hearing on the petition if the plaintiff is indigent. If the
26 court finds that the plaintiff is not indigent the court may
27 order the plaintiff to pay the filing fees.

28 § 6105. Hearings.

29 (a) General rule.--Within ten days of the filing of a
30 petition under this chapter a hearing shall be held at which the

1 plaintiff must prove the allegation of abuse by a preponderance
2 of the evidence. The court shall advise the defendant of the
3 right to be represented by counsel.

4 (b) Temporary orders.--The court may enter such temporary
5 orders as it deems necessary to protect the plaintiff or minor
6 children from abuse upon good cause shown in an ex parte
7 proceeding. Immediate and present danger of abuse to the
8 plaintiff or minor children shall constitute good cause for the
9 purposes of this subsection.

10 (c) Continued hearings.--If a hearing under subsection (a)
11 is continued, the court may make or extend such temporary orders
12 under subsection (b) as it deems necessary.

13 § 6106. Relief.

14 (a) General rule.--The court may grant any protection order
15 or approve any consent agreement to bring about a cessation of
16 abuse of the plaintiff or minor children. The order or agreement
17 may include:

18 (1) Directing the defendant to refrain from abusing the
19 plaintiff or minor children.

20 (2) Granting possession to the plaintiff of the
21 residence or household to the exclusion of the defendant by
22 evicting the defendant or restoring possession to the
23 plaintiff when the residence or household is jointly owned or
24 leased by the parties or is owned or leased by the entireties
25 or is owned or leased solely by the plaintiff.

26 (3) When the defendant has a duty to support the
27 plaintiff or minor children living in the residence or
28 household and the defendant is the sole owner or lessee,
29 granting possession to the plaintiff of the residence or
30 household to the exclusion of the defendant by evicting the

1 defendant or restoring possession to the plaintiff or, by
2 consent agreement, allowing the defendant to provide suitable
3 alternate housing.

4 (4) Awarding temporary custody of or establishing
5 temporary visitation rights with regard to minor children.

6 (5) After a hearing in accordance with section 6105(a)
7 (relating to hearings), directing the defendant to pay
8 financial support to those persons the defendant has a duty
9 to support. The support order shall be temporary and any
10 beneficiary of the order must file a complaint for support
11 under the provisions of 42 Pa.C.S. Ch. 67 (relating to
12 support proceedings) within two weeks of the date of the
13 issuance of the protection order. If a complaint for support
14 is not filed, that portion of the protection order requiring
15 the defendant to pay support is void. When there is a
16 subsequent ruling on a complaint for support under Chapter 45
17 the portion of the protection order requiring the defendant
18 to pay support expires.

19 (b) Duration and amendment of order or agreement.--A
20 protection order or approved consent agreement shall be for a
21 fixed period of time not to exceed one year. The court may amend
22 its order or agreement at any time upon subsequent petition
23 filed by either party.

24 (c) Title to real property unaffected.--No order or
25 agreement under this chapter shall in any manner affect title to
26 any real property.

27 § 6107. Service of orders.

28 A copy of an order under this chapter shall be issued to the
29 plaintiff, the defendant and the police department with
30 appropriate jurisdiction to enforce the order or agreement in

1 accordance with the provisions of this chapter or as ordered by
2 the court.

3 § 6108. Emergency relief by minor judiciary.

4 (a) General rule.--When the court is unavailable from the
5 close of business at the end of the week to the resumption of
6 business at the beginning of the week, a petition may be filed
7 before a district justice or judge of the Philadelphia Municipal
8 Court who may grant relief in accordance with section 6106(a)(2)
9 or (3) (relating to relief) if the district justice or judge
10 deems it necessary to protect the plaintiff or minor children
11 from abuse upon good cause shown in an ex parte proceeding.
12 Immediate and present danger of abuse to the plaintiff or minor
13 children shall constitute good cause for the purposes of this
14 subsection.

15 (b) Expiration of order.--An order issued under subsection
16 (a) shall expire as of the resumption of business of the court
17 at the beginning of the week or within 72 hours, whichever
18 occurs sooner, at which time the plaintiff may seek a temporary
19 order from the court.

20 (c) Certification of order to court.--An order issued under
21 this section and any documentation in support thereof shall be
22 immediately certified to the court. The certification to the
23 court shall have the effect of commencing proceedings under
24 section 6104 (relating to commencement of proceedings) and
25 invoking the other provisions of this chapter.

26 § 6109. Arrest for violation of order.

27 (a) General rule.--An arrest for violation of an order
28 issued pursuant to this chapter may be without warrant upon
29 probable cause whether or not the violation is committed in the
30 presence of the police officer. The police officer may verify,

1 if necessary, the existence of a protection order by telephone
2 or radio communication with the appropriate police department.

3 (b) Procedure following arrest.--Subsequent to an arrest the
4 defendant shall be taken without unnecessary delay before the
5 court that issued the order. When that court is unavailable the
6 defendant shall be arraigned before a district justice or the
7 Philadelphia Municipal Court in accordance with general rules.

8 (c) Other emergency powers unaffected.--This section and
9 section 6110 (relating to contempt for violation of order or
10 agreement) shall not be construed to in any way limit any of the
11 other powers for emergency relief provided in this chapter.

12 § 6110. Contempt for violation of order or agreement.

13 (a) General rule.--Upon violation of a protection order or a
14 court approved consent agreement the court may hold the
15 defendant in indirect criminal contempt and punish the defendant
16 in accordance with law.

17 (b) Trial and punishment.--A sentence for contempt under
18 this chapter may include imprisonment up to six months or a fine
19 not to exceed \$1,000 or both.

20 § 6111. Procedure and other remedies.

21 Unless otherwise indicated in this chapter, a proceeding
22 under this chapter shall be in accordance with applicable
23 general rules and shall be in addition to any other available
24 civil or criminal remedies.

25 CHAPTER 63

26 CHILD PROTECTIVE SERVICES

27 Subchapter

28 A. Preliminary Provisions

29 B. Reporting Suspected Child Abuse

30 C. Powers and Duties of Department

D. Organization and Responsibilities of Child Protective Service

E. Miscellaneous Provisions

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

6301. Short title of chapter.

6302. Finding and purpose of chapter.

6303. Definitions.

§ 6301. Short title of chapter.

This chapter shall be known and may be cited as the "Child Protective Services Law."

§ 6302. Finding and purpose of chapter.

(a) Finding.--Abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment.

(b) Purpose.--It is the purpose of this chapter to encourage more complete reporting of suspected child abuse and to establish in each county a child protective service capable of investigating such reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the well-being of the child and to preserve and stabilize family life wherever appropriate.

§ 6303. 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:

"Abused child." A child under 18 years of age who exhibits evidence of serious physical or mental injury not explained by

1 the available medical history as being accidental, sexual abuse
2 or serious physical neglect, if the injury, abuse or neglect has
3 been caused by the acts or omissions of the parents of the child
4 or by a person responsible for the welfare of the child. No
5 child shall be deemed to be physically or mentally abused for
6 the sole reason the child is in good faith being furnished
7 treatment by spiritual means through prayer alone in accordance
8 with the tenets and practices of a recognized church or
9 religious denomination by an accredited practitioner thereof or
10 solely on the grounds of environmental factors which are beyond
11 the control of the person responsible for the welfare of the
12 child such as inadequate housing, furnishings, income, clothing
13 and medical care.

14 "Child protective service." That section of each county
15 public child welfare agency required to be established by
16 section 6361 (relating to organization of child protective
17 service)

18 "Department." The Department of Public Welfare of the
19 Commonwealth.

20 "Expunge." To strike out or obliterate entirely so that the
21 expunged information may not be stored, identified or later
22 recovered by any mechanical or electronic means or otherwise.

23 "Founded report." A report made pursuant to this chapter if
24 there has been any judicial adjudication based on a finding that
25 a child who is a subject of the report has been abused.

26 "Indicated report." A report made pursuant to this chapter
27 if an investigation by the child protective service determines
28 that substantial evidence of the alleged abuse exists based on
29 either:

30 (1) Available medical evidence and the child protective

1 service investigation.

2 (2) An admission of the acts of abuse by the parent of
3 the child or person responsible for the welfare of the child.

4 "Secretary." The Secretary of Public Welfare of the
5 Commonwealth.

6 "Subject of the report." Any child reported to the central
7 register of child abuse and a parent, guardian or other legally
8 responsible person also named in the report.

9 "Under investigation." A report pursuant to this chapter
10 which is being investigated to determine whether it is
11 "founded," "indicated" or "unfounded."

12 "Unfounded report." Any report made pursuant to this chapter
13 unless the report is a "founded report" or unless an
14 investigation by the appropriate child protective service
15 determines that the report is an "indicated report."

16 SUBCHAPTER B

17 REPORTING SUSPECTED CHILD ABUSE

18 Sec.

19 6311. Persons required to report suspected child abuse.

20 6312. Persons permitted to report suspected child abuse.

21 6313. Reporting procedure.

22 6314. Photographs and x-rays of child subject to report.

23 6315. Taking child into protective custody.

24 6316. Admission to private and public hospitals.

25 6317. Reporting and postmortem investigation of deaths.

26 6318. Immunity from liability.

27 6319. Penalties for failure to report.

28 § 6311. Persons required to report suspected child abuse.

29 (a) General rule.--Persons who, in the course of their
30 employment, occupation or practice of their profession, come

1 into contact with children shall report or cause a report to be
2 made in accordance with section 6313 (relating to reporting
3 procedure) when they have reason to believe, on the basis of
4 their medical, professional or other training and experience,
5 that a child coming before them in their professional or
6 official capacity is an abused child.

7 (b) Enumeration of persons required to report.--Persons
8 required to report suspected child abuse under subsection (a)
9 include, but are not limited to, any licensed physician,
10 osteopath, medical examiner, coroner, dentist, optometrist,
11 chiropractor, podiatrist, intern, registered nurse, licensed
12 practical nurse, hospital personnel engaged in the admission,
13 examination, care or treatment of persons, a Christian Science
14 practitioner, school administrator, school teacher, school
15 nurse, social services worker, day care center worker or any
16 other child care or foster care worker, mental health
17 professional, peace officer or law enforcement official.

18 (c) Staff members of institutions, etc.--Whenever a person
19 is required to report under subsection (b) in the capacity as a
20 member of the staff of a medical or other public or private
21 institution, school, facility or agency, that person shall
22 immediately notify the person in charge of the institution,
23 school, facility or agency or the designated agent of the person
24 in charge. Upon notification, the person in charge or the
25 designated agent, if any, shall assume the responsibility and
26 have the legal obligation to report or cause a report to be made
27 in accordance with section 6313. This chapter does not require
28 more than one report from any such institution, school, facility
29 or agency.

30 § 6312. Persons permitted to report suspected child abuse.

1 In addition to those persons and officials required to report
2 suspected child abuse, any person may make such a report if that
3 person has reasonable cause to suspect that a child is an abused
4 child.

5 § 6313. Reporting procedure.

6 (a) General rule.--Reports of suspected child abuse from
7 persons required to report under section 6311 (relating to
8 persons required to report suspected child abuse) shall be made
9 immediately by telephone and in writing within 48 hours after
10 the oral report.

11 (b) Oral reports.--Oral reports shall be made to the
12 department pursuant to Subchapter C (relating to powers and
13 duties of department) and may be made to the appropriate child
14 protective service. When oral reports are made initially to the
15 child protective service, the child protective service shall
16 immediately prepare a child abuse report summary in such form as
17 the department prescribes by regulation and shall immediately
18 forward the report summary to the department to be held in the
19 pending complaint file as provided in Subchapter C. The initial
20 child abuse report summary shall be supplemented as more facts
21 become available, as the written report is received and when a
22 determination is made as to whether a report of suspected child
23 abuse is a founded report, an unfounded report or an indicated
24 report.

25 (c) Written reports.--Written reports from persons required
26 to report under section 6311 shall be made to the appropriate
27 child protective service in a manner and on forms the department
28 prescribes by regulation. The written reports shall include the
29 following information if available:

30 (1) The names and addresses of the child and the parents

1 or other person responsible for the care of the child if
2 known.

3 (2) The age and sex of the child.

4 (3) The nature and extent of the suspected child abuse
5 including any evidence of prior abuse to the child or
6 siblings of the child.

7 (4) The name of the person or persons responsible for
8 causing the suspected abuse if known.

9 (5) Family composition.

10 (6) The source of the report.

11 (7) The person making the report and where that person
12 can be reached.

13 (8) The actions taken by the reporting source including
14 the taking of photographs and x-rays, removal or keeping of
15 the child or notifying the medical examiner or coroner.

16 (9) Any other information which the department may
17 require by regulation.

18 (d) Failure to confirm oral report.--The failure of a person
19 reporting cases of suspected child abuse to confirm an oral
20 report in writing within 48 hours shall not relieve the child
21 protective service from any duties prescribed by this chapter.
22 In such event, the child protective service shall proceed as if
23 a written report were actually made.

24 § 6314. Photographs and x-rays of child subject to report.

25 A person or official required to report cases of suspected
26 child abuse may take or cause to be taken photographs of the
27 areas of trauma visible on a child who is subject to a report
28 and, if medically indicated, cause to be performed a
29 radiological examination on the child. Any photographs or x-rays
30 taken shall be sent to the child protective service at the time

1 the written report is sent or as soon thereafter as possible.

2 § 6315. Taking child into protective custody.

3 (a) General rule.--A child may be taken into protective
4 custody:

5 (1) As provided by 42 Pa.C.S. § 6324 (relating to taking
6 into custody).

7 (2) By a physician examining or treating the child or by
8 the director, or a person specifically designated in writing
9 by the director, of any hospital or other medical institution
10 where the child is being treated if protective custody is
11 immediately necessary to protect the child from further
12 serious physical injury, sexual abuse or serious physical
13 neglect.

14 (b) Duration of custody.--No child may be held in protective
15 custody for more than 24 hours unless the appropriate child
16 protective service is immediately notified that the child has
17 been taken into custody and the child protective service obtains
18 an order from a court of competent jurisdiction permitting the
19 child to be held in custody for a longer period. Each court
20 shall insure that a judge is available 24 hours a day, 365 days
21 a year to accept and decide the actions brought by a child
22 protective service under this subsection within the 24-hour
23 period.

24 (c) Notice of custody.--An individual taking a child into
25 protective custody under this chapter shall immediately, and
26 within 24 hours in writing, notify the parent, guardian or other
27 custodian of the child of the whereabouts of the child and the
28 reasons for the need to take the child into protective custody
29 and shall immediately notify the appropriate child protective
30 service in order that proceedings under Chapter 63 of Title 42

1 (relating to juvenile matters) may be initiated, if appropriate.

2 (d) Detention hearing.--In no case shall protective custody
3 under this chapter be maintained longer than 72 hours without a
4 detention hearing. If at the detention hearing it is determined
5 that protective custody shall be continued, the child protective
6 service shall within 48 hours file a petition with the court
7 under Chapter 63 of Title 42.

8 (e) Place of detention.--No child taken into protective
9 custody under this chapter may be detained during the protective
10 custody except in an appropriate medical facility, foster home
11 or other appropriate facility approved by the department for
12 this purpose.

13 (f) Conference with parent or other custodian.--A conference
14 between the parent, guardian or other custodian of the child
15 taken into temporary protective custody pursuant to this section
16 and the case worker designated by the child protection service
17 to be responsible for the child shall be held within 48 hours of
18 the time that the child is taken into custody for the purpose
19 of:

20 (1) Explaining to the parent, guardian or other
21 custodian the reasons for the temporary detention of the
22 child and the whereabouts of the child.

23 (2) Expediting, wherever possible, the return of the
24 child to the custody of the parent, guardian or other
25 custodian where custody is no longer necessary.

26 § 6316. Admission to private and public hospitals.

27 (a) General rule.--Children appearing to suffer any physical
28 or mental trauma which may constitute child abuse shall be
29 admitted to and treated in appropriate facilities of private and
30 public hospitals on the basis of medical need and shall not be

1 refused or deprived in any way of proper medical treatment and
2 care.

3 (b) Failure of hospital to admit child.--The failure of a
4 hospital to admit and properly treat and care for a child
5 pursuant to subsection (a) shall be cause for the department to
6 order immediate admittance, treatment and care by the hospital
7 which shall be enforceable, if necessary, by the prompt
8 institution of a civil action by the department. The child,
9 through an attorney, shall also have the additional and
10 independent right to seek immediate injunctive relief and
11 institute an appropriate civil action for damages against the
12 hospital.

13 § 6317. Reporting and postmortem investigation of deaths.

14 A person or official required to report cases of suspected
15 child abuse, including employees of a county public child
16 welfare agency and its child protective service, who has
17 reasonable cause to suspect that a child died as a result of
18 child abuse shall report that fact to the coroner. The coroner
19 shall accept the report for investigation and shall report his
20 finding to the police, the district attorney, the appropriate
21 child protective service and, if the report is made by a
22 hospital, the hospital.

23 § 6318. Immunity from liability.

24 (a) General rule.--A person, hospital, institution, school,
25 facility or agency participating in good faith in the making of
26 a report or testifying in a proceeding arising out of an
27 instance of suspected child abuse, the taking of photographs or
28 the removal or keeping of a child pursuant to section 6315
29 (relating to taking child into protective custody) shall have
30 immunity from any civil or criminal liability that might

1 otherwise result by reason of those actions.

2 (b) Presumption of good faith.--For the purpose of any civil
3 or criminal proceeding, the good faith of a person required to
4 report cases of child abuse pursuant to section 6311 (relating
5 to persons required to report suspected child abuse) shall be
6 presumed.

7 § 6319. Penalties for failure to report.

8 A person or official required by this chapter to report a
9 case of suspected child abuse who willfully fails to do so
10 commits a summary offense for the first violation and a
11 misdemeanor of the third degree for a second or subsequent
12 violation.

13 SUBCHAPTER C

14 POWERS AND DUTIES OF DEPARTMENT

15 Sec.

16 6331. Establishment of pending complaint file and Statewide
17 central register.

18 6332. Establishment of Statewide toll-free telephone number.

19 6333. Continuous availability of department.

20 6334. Disposition of complaints received.

21 6335. Information in pending complaint file.

22 6336. Information in Statewide central register.

23 6337. Disposition of unfounded reports.

24 6338. Disposition of founded and indicated reports.

25 6339. Confidentiality of reports.

26 6340. Release of information in confidential reports.

27 6341. Amendment, sealing or expungement of information.

28 6342. Studies of data in records.

29 6343. Investigating performance of child protective service.

30 6344. Audits by Attorney General.

1 6345. Cooperation of other agencies.

2 6346. Annual reports to Governor and General Assembly.

3 6347. Regulations.

4 6348. Penalties.

5 § 6331. Establishment of pending complaint file and Statewide
6 central register.

7 There shall be established in the department:

8 (1) A pending complaint file of child abuse reports
9 under investigation.

10 (2) A Statewide central register of child abuse which
11 shall consist of founded and indicated reports of child
12 abuse.

13 § 6332. Establishment of Statewide toll-free telephone number.

14 (a) General rule.--The department shall establish a single
15 Statewide toll-free telephone number that all persons, whether
16 mandated by law or not, may use to report cases of suspected
17 child abuse. A child protective service may use the Statewide
18 toll-free telephone number for determining the existence of
19 prior founded or indicated reports of child abuse in the
20 Statewide central register.

21 (b) Limitation on use.--A child protective service may only
22 request and receive information pursuant to this subsection
23 either on its own behalf because it has before it a child
24 suspected of being an abused child or on behalf of a physician
25 examining or treating a child or on behalf of the director or a
26 person specifically designated in writing by the director of any
27 hospital or other medical institution where a child is being
28 treated, where the physician or the director or a person
29 specifically designated in writing by the director suspects the
30 child of being an abused child.

1 § 6333. Continuous availability of department.

2 The department shall be capable of receiving oral reports of
3 child abuse made pursuant to this chapter and report summaries
4 of child abuse from child protective services and shall be
5 capable of immediately identifying prior reports of child abuse
6 in the Statewide central register and of monitoring the
7 provision of child protective services 24 hours a day, seven
8 days a week.

9 § 6334. Disposition of complaints received.

10 (a) Notice to child protective service.--Upon receipt of a
11 complaint of suspected child abuse, the department shall
12 immediately transmit in writing (and orally if deemed advisable)
13 to the appropriate child protective service notice that the
14 complaint of suspected child abuse has been received and the
15 substance of the complaint. If the Statewide central register
16 contains information indicating a prior founded or indicated
17 report concerning a subject of the report, the department shall
18 immediately notify the appropriate child protective service of
19 this fact.

20 (b) Recording in pending complaint file.--Upon receipt of a
21 complaint of suspected child abuse, the department shall
22 maintain a record of the complaint of suspected child abuse in
23 the pending complaint file.

24 § 6335. Information in pending complaint file.

25 (a) Information authorized.--No information other than that
26 permitted to be retained in the Statewide central register in
27 section 6336 (relating to information in Statewide central
28 register) shall be retained in the pending complaint file or
29 otherwise by the department.

30 (b) Access to information.--Except as provided in section

1 6342 (relating to studies of data in records), no person, other
2 than an employee of the department in the course of official
3 duties in connection with the responsibilities of the department
4 under this chapter, shall at any time have access to any
5 information in the pending complaint file.

6 § 6336. Information in Statewide central register.

7 (a) Information authorized.--The Statewide central register
8 shall include and shall be limited to the following information:

9 (1) The names of the subjects of the reports.

10 (2) The date or dates and the nature and extent of the
11 alleged instances of suspected child abuse.

12 (3) The home addresses of subjects of the report.

13 (4) The age of the children suspected of being abused.

14 (5) The locality in which the suspected abuse occurred.

15 (6) Whether the report is a founded report or an
16 indicated report.

17 (7) The progress of any legal proceedings brought on the
18 basis of the report of suspected child abuse.

19 No information other than that permitted in this subsection
20 shall be retained in the Statewide central register, the pending
21 complaint file or otherwise by the department.

22 (b) Type of information released.--Except as provided in
23 sections 6334 (relating to disposition of complaints received),
24 6335 (relating to information in pending complaint file) and
25 6342 (relating to studies of data in records), persons receiving
26 information from the Statewide central register may be informed
27 only as to:

28 (1) Whether a prior founded or indicated report exists.

29 (2) The number of founded and indicated reports.

30 (3) The nature and extent of the alleged instances of

1 suspected child abuse.

2 (4) Whether the reports are founded reports or indicated
3 reports.

4 (c) Limitation on release of information.--Except as
5 provided in sections 6334, 6335 and 6342, no information shall
6 be released from the Statewide central register unless pursuant
7 to section 6332 (relating to establishment of Statewide toll-
8 free telephone number) and unless the department has positively
9 identified the representative of the child protective service
10 requesting the information and the department has inquired into
11 and is satisfied that the representative has a legitimate need,
12 within the scope of official duties and the provisions of
13 section 6332, to obtain information from the Statewide central
14 register. Information in the Statewide central register shall
15 not be released for any purpose or to any individual not
16 specified in this section.

17 § 6337. Disposition of unfounded reports.

18 (a) General rule.--When a report of suspected child abuse is
19 determined by the appropriate child protective service to be an
20 unfounded report, the information concerning that report of
21 suspected child abuse shall be expunged immediately from the
22 pending complaint file and no information other than that
23 authorized by subsection (b), which shall not include any
24 identifying information on any subject of the report, shall be
25 retained by the department.

26 (b) Absence of other determination.--If an investigation of
27 a report of suspected child abuse conducted by the appropriate
28 child protective service pursuant to this chapter does not
29 determine within 60 days of the date of the initial report of
30 the instance of suspected child abuse that the report is an

1 indicated report or an unfounded report, or unless within that
2 same 60-day period the report is determined to be a founded
3 report, the report shall be considered to be an unfounded report
4 and all information identifying the subjects of the report shall
5 be expunged immediately. Nothing in this subsection shall in any
6 way limit the powers and duties of the department as provided in
7 section 6343 (relating to investigating performance of child
8 protective service).

9 (c) Expungement of information.--All information identifying
10 the subjects of any report of suspected child abuse determined
11 to be an unfounded report shall be expunged immediately from the
12 pending complaint file and the Statewide central register. The
13 expungement shall be mandated and guaranteed by the department.
14 § 6338. Disposition of founded and indicated reports.

15 (a) General rule.--When a report of suspected child abuse is
16 determined by the appropriate child protective service to be a
17 founded report or an indicated report, the information
18 concerning that report of suspected child abuse shall be
19 expunged immediately from the pending complaint file and an
20 appropriate entry shall be made in the Statewide central
21 register.

22 (b) Expungement of information when child attains 18 years
23 of age.--All information identifying the subjects of all
24 indicated reports and all information identifying the subject
25 child of all founded reports shall be expunged when the subject
26 child reaches the age of 18 years. The expungement shall be
27 mandated and guaranteed by the department.

28 § 6339. Confidentiality of reports.

29 Except as otherwise provided in this subchapter, reports made
30 pursuant to this chapter including, but not limited to, report

1 summaries of child abuse and written reports made pursuant to
2 section 6313(b) and (c) (relating to reporting procedure) as
3 well as any other information obtained, reports written or
4 photographs or x-rays taken concerning alleged instances of
5 child abuse in the possession of the department, a county public
6 child welfare agency or a child protective service shall be
7 confidential.

8 § 6340. Release of information in confidential reports.

9 (a) General rule.--Reports specified in section 6339
10 (relating to confidentiality of reports) shall only be made
11 available to:

12 (1) An authorized official of a child protective service
13 in the course of official duties.

14 (2) A physician examining or treating a child or the
15 director or a person specifically designated in writing by
16 the director of any hospital or other medical institution
17 where a child is being treated when the physician or the
18 director or the designee of the director suspect the child of
19 being an abused child.

20 (3) A guardian ad litem for the child.

21 (4) An authorized official of the department in
22 accordance with department regulations or in accordance with
23 the conduct of a performance audit as authorized by section
24 6343 (relating to investigating performance of child
25 protective service).

26 (5) A court of competent jurisdiction pursuant to a
27 court order.

28 (b) Release of information to subject child.--At any time
29 and upon written request, a subject of a report may receive a
30 copy of all information, except that prohibited from being

1 disclosed by subsection (c), contained in the Statewide central
2 register or in any report filed pursuant to section 6313
3 (relating to reporting procedure).

4 (c) Protecting identity of person making report.--The
5 release of data that would identify the person who made a report
6 of suspected child abuse or the person who cooperated in a
7 subsequent investigation is prohibited unless the secretary
8 finds that the release will not be detrimental to the safety of
9 that person.

10 § 6341. Amendment, sealing or expungement of information.

11 (a) General rule.--At any time:

12 (1) The secretary may amend, seal or expunge any record
13 upon good cause shown and notice to the subjects of the
14 report.

15 (2) A subject of a report may request the secretary to
16 amend, seal or expunge information contained in the pending
17 complaint file and the Statewide central register or order
18 the appropriate child protective service to amend, seal or
19 expunge the information contained in its files pertaining to
20 any report filed pursuant to section 6313 (relating to
21 reporting procedure).

22 (b) Hearing.--If the secretary refuses or does not act
23 within a reasonable time, but in no event later than 30 days
24 after the request, the subject shall have the right to a hearing
25 before the secretary or a designated agent of the secretary to
26 determine whether the summary in the Statewide central register
27 or the contents of any report filed pursuant to section 6313
28 should be amended, sealed or expunged on the grounds that it is
29 inaccurate or that it is being maintained in a manner
30 inconsistent with this chapter. The appropriate child protective

1 service shall be given notice of the hearing.

2 (c) Burden of proof and evidence.--The burden of proof in
3 the hearing shall be on the department and appropriate child
4 protective service. In the hearings, the fact that there was a
5 court finding of child abuse shall be presumptive evidence that
6 the report was substantiated.

7 (d) Order.--The secretary or designated agent may make any
8 appropriate order respecting the amendment or expungement of
9 such records to make it accurate or consistent with the
10 requirements of this chapter.

11 (e) Notice of expungement or amendment.--Written notice of
12 an expungement or amendment of any record, made pursuant to the
13 provisions of this chapter, shall be served upon each subject of
14 the record and the appropriate child protective service. The
15 latter, upon receipt of the notice, shall take appropriate,
16 similar action in regard to the local child abuse records and
17 inform, for the same purpose, the appropriate coroner if that
18 officer has received reports pursuant to section 6367 (relating
19 to reports to department and coroner).

20 (f) Access to sealed record.--Once sealed, a record shall
21 not be otherwise available except as provided in section 6342
22 (relating to studies of data in records) or except if the
23 secretary, upon notice to the subjects of the report, gives
24 personal approval for an appropriate reason.

25 § 6342. Studies of data in records.

26 The department may conduct or authorize the conducting of
27 studies of the data contained in the pending complaint file and
28 the Statewide central register and distribute the results of the
29 studies. No study may contain the name or other information by
30 which a subject of a report could be identified.

1 § 6343. Investigating performance of child protective service.

2 (a) General rule.--If within 30 days from the date of an
3 initial report of suspected child abuse the appropriate child
4 protective service has not properly investigated the report and
5 informed the department that the report is an indicated report
6 or an unfounded report, or unless within that same 30-day period
7 the report is determined to be a founded report, the department
8 shall immediately begin an inquiry into the performance of the
9 child protective service which inquiry may include a performance
10 audit of the child protective service as provided in subsection
11 (b). On the basis of that inquiry, the department shall take
12 appropriate action to require that the provisions of this
13 chapter be strictly followed, which action may include, without
14 limitation, the institution of appropriate legal action and the
15 withholding of reimbursement for all or part of the activities
16 of the county public child welfare agency.

17 (b) Performance audit.--Notwithstanding any other provision
18 of this chapter, the secretary or a designee of the secretary
19 may direct, at their discretion, a performance audit of any
20 activity engaged in pursuant to this chapter.

21 § 6344. Audits by Attorney General.

22 The Attorney General shall conduct a mandated audit done
23 randomly but at least once every three months during each year
24 on an unannounced basis to ensure that the expungement
25 requirements of this chapter are being fully and properly
26 conducted.

27 § 6345. Cooperation of other agencies.

28 The secretary may request and shall receive from Commonwealth
29 agencies, political subdivisions, an authorized agency or any
30 other agency providing services under the local child protective

1 services plan any assistance and data that will enable the
2 department and the child protective services to fulfill their
3 responsibilities properly.

4 § 6346. Annual reports to Governor and General Assembly.

5 No later than April 15 of every year, the secretary shall
6 prepare and transmit to the Governor and the General Assembly a
7 report on the operations of the central register of child abuse
8 and the various child protective services. The report shall
9 include a full statistical analysis of the reports of suspected
10 child abuse made to the department together with a report on the
11 implementation of this chapter and its total cost to the
12 Commonwealth, the evaluation of the secretary of services
13 offered under this chapter and recommendations for repeal or for
14 additional legislation to fulfill the purposes of this chapter.
15 All such recommendations should contain an estimate of increased
16 or decreased costs resulting therefrom.

17 § 6347. Regulations.

18 The department shall adopt regulations necessary to implement
19 this chapter.

20 § 6348. Penalties.

21 (a) Failure to amend or expunge information.--

22 (1) A person or official authorized to keep the records
23 mentioned in section 6337 (relating to disposition of
24 unfounded reports) or 6338 (relating to disposition of
25 founded and indicated reports) who willfully fails to expunge
26 the information when required commits a summary offense for
27 the first violation and a misdemeanor of the third degree for
28 a second or subsequent violation.

29 (2) A person who willfully fails to obey a final order
30 of the secretary or designated agent of the secretary to

1 amend or expunge the summary of the report in the Statewide
2 central register or the contents of any report filed pursuant
3 to section 6313 (relating to reporting procedure) commits a
4 summary offense.

5 (b) Unauthorized release of information.--A person who
6 willfully releases or permits the release of any data and
7 information contained in the pending complaint file, the
8 Statewide central register or the child welfare records required
9 by this chapter, including records maintained by any county
10 public child welfare agency and any child protective service, to
11 persons or agencies not permitted by this chapter commits a
12 misdemeanor of the third degree.

13 SUBCHAPTER D

14 ORGANIZATION AND RESPONSIBILITIES OF

15 CHILD PROTECTIVE SERVICE

16 Sec.

17 6361. Organization of child protective service.

18 6362. Responsibilities of child protective service.

19 6363. Local plan for child protective services.

20 6364. Purchasing services of other agencies.

21 6365. Services for prevention and treatment of child abuse.

22 6366. Continuous availability to receive reports.

23 6367. Reports to department and coroner.

24 6368. Investigation of reports.

25 6369. Taking child into protective custody.

26 6370. Services for protection of child at home or in custody.

27 6371. Rehabilitative services for child and family.

28 6372. Protecting well-being of children detained outside home.

29 § 6361. Organization of child protective service.

30 (a) Establishment.--Every county public child welfare agency

1 shall establish a "Child Protective Service" within the agency.

2 (b) Staff and organization.--The child protective service
3 shall have a sufficient staff of sufficient qualifications to
4 fulfill the purposes of this chapter and be organized in such a
5 way as to maximize the continuity of responsibility, care and
6 services of individual workers toward individual children and
7 families.

8 (c) Functions authorized.--The child protective service
9 shall perform those functions assigned by this chapter to it and
10 only such others that would further the purposes of this
11 chapter.

12 § 6362. Responsibilities of child protective service.

13 (a) General rule.--The child protective service shall be the
14 sole agency responsible for receiving and investigating all
15 reports of child abuse made pursuant to this chapter
16 specifically including, but not limited to, reports of child
17 abuse in facilities operated by the department and other public
18 agencies, for the purpose of providing protective services to
19 prevent further abuses to children and to provide or arrange for
20 and monitor the provision of those services necessary to
21 safeguard and ensure the well-being and development of the child
22 and to preserve and stabilize family life wherever appropriate.

23 (b) Assumption of responsibility by department.--When the
24 suspected abuse has been committed by the county public child
25 welfare agency or any of its agents or employees, the department
26 shall assume the role of the agency.

27 § 6363. Local plan for child protective services.

28 (a) General rule.--No later than once each year as required
29 by the department each county agency child protective service
30 shall prepare and submit to the department, after consultation

1 with local law enforcement agencies, the court and appropriate
2 public or private agencies and after a public hearing, a local
3 plan for the provision of child protective services which shall
4 describe the implementation of this chapter including the
5 organization, staffing, mode of operations and financing of the
6 child protective service as well as the provisions made for
7 purchase of service and interagency relations. The local plan
8 may take effect immediately.

9 (b) Certification by department.--Within 60 days the
10 department shall certify whether or not the local plan fulfills
11 the purposes of and meets the requirements set forth in this
12 chapter. If the department certifies that the local plan does
13 not do so, the department shall state the reasons therefor and
14 may withhold reimbursement for all or part of the activities of
15 the agency. If the department finds that a proposed local plan
16 does not meet the requirements set forth in this chapter, the
17 child protective service shall revise the local plan in
18 accordance with the reasons of the department for disapproval.

19 § 6364. Purchasing services of other agencies.

20 Any other provision of law notwithstanding but consistent
21 with sections 6361 (relating to organization of child protective
22 service) and 6362 (relating to responsibilities of child
23 protective service), the county public child welfare agency,
24 based upon the local plan of services as provided in section
25 6363 (relating to local plan for child protective services), may
26 purchase and utilize the services of any appropriate public or
27 private agency.

28 § 6365. Services for prevention and treatment of child abuse.

29 Each child protective service shall make available among its
30 services for the prevention and treatment of child abuse

1 multidisciplinary teams, instruction in education for
2 parenthood, protective and preventive social counseling,
3 emergency caretaker services, emergency shelter care, emergency
4 medical services and the establishment of groups organized by
5 former abusing parents to encourage self-reporting and self-
6 treatment of present abusers.

7 § 6366. Continuous availability to receive reports.

8 Each child protective service shall receive 24 hours a day,
9 seven days a week all reports, both oral and written, of
10 suspected child abuse in accordance with this chapter, the local
11 plan for the provision of child protective services and the
12 regulations of the department.

13 § 6367. Reports to department and coroner.

14 (a) Reports to department.--Upon the receipt of each report
15 of suspected child abuse made pursuant to this chapter, the
16 child protective service shall immediately transmit a child
17 abuse report summary as provided in section 6313 (relating to
18 reporting procedure) to the department. Supplemental reports
19 shall be made at regular intervals thereafter in a manner and
20 form the department prescribes by regulation to the end that the
21 department is kept fully informed and up-to-date concerning the
22 status of reports of child abuse.

23 (b) Reports to coroner.--The child protective service shall
24 give telephone notice and forward immediately a copy of reports
25 made pursuant to this chapter which involve the death of a child
26 to the appropriate coroner pursuant to section 6317 (relating to
27 reporting and postmortem investigation of deaths).

28 § 6368. Investigation of reports.

29 (a) General rule.--Upon receipt of each report of suspected
30 child abuse, the child protective service shall commence within

1 24 hours an appropriate investigation which shall include a
2 determination of the risk to the child or children if they
3 continue to remain in the existing home environment as well as a
4 determination of the nature, extent and cause of any condition
5 enumerated in the report and, after seeing to the safety of the
6 child or children, immediately notify the subjects of the report
7 in writing of the existence of the report and their rights
8 pursuant to this chapter in regard to amendment or expungement.

9 (b) Conditions outside home environment.--The investigation
10 shall determine whether the child is being harmed by factors
11 beyond the control of the parent or other person responsible for
12 the welfare of the child and, if so determined, the child
13 protective service shall promptly take all available steps to
14 remedy and correct these conditions including but not limited to
15 the coordination of social services for the child and the
16 family.

17 (c) Limitation of actions.--The investigation shall be
18 completed within 30 days. The child protective service shall
19 determine, within 30 days, whether the report is "founded,"
20 "indicated" or "unfounded."

21 § 6369. Taking child into protective custody.

22 Pursuant to the provisions of section 6315 (relating to
23 taking child into protective custody) and after court order, the
24 child protective service shall take a child into protective
25 custody for protection from further abuse. No child protective
26 service worker may enter the home of any individual for this
27 purpose without judicial authorization.

28 § 6370. Services for protection of child at home or in custody.

29 (a) General rule.--Based on the investigation and evaluation
30 conducted pursuant to this chapter, the child protective service

1 shall provide or contract with private or public agencies for
2 the protection of the child at home whenever possible and those
3 services necessary for adequate care of the child when placed in
4 protective custody. Prior to offering these services to a
5 family, the agency shall explain that it has no legal authority
6 to compel the family to receive the services but may inform the
7 family of the obligations and authority of the child protective
8 service to initiate appropriate court proceedings.

9 (b) Initiation of court proceedings.--In those cases in
10 which an appropriate offer of service is refused and the child
11 protective service determines, or if the service for any other
12 appropriate reason determines that the best interests of the
13 child require court action, the child protective service shall
14 initiate the appropriate court proceeding. The child protective
15 service shall assist the court during all stages of the court
16 proceeding in accordance with the purposes of this chapter.

17 § 6371. Rehabilitative services for child and family.

18 The child protective service shall provide or arrange for and
19 monitor rehabilitative services for children and their families
20 on a voluntary basis or under a final or intermediate order of
21 the court.

22 § 6372. Protecting well-being of children detained outside home.

23 The child protective service shall be as equally vigilant of
24 the status, well-being and conditions under which a child is
25 living and being maintained in a facility other than that of a
26 parent, custodian or guardian from which the child has been
27 removed as the service is of the conditions in the dwelling of
28 the parent, custodian or guardian. Where the child protective
29 service finds that the placement for any temporary or permanent
30 custody, care or treatment is for any reason inappropriate or

1 harmful to the physical or mental well-being of the child, it
2 shall take immediate steps to remedy these conditions including
3 petitioning the court.

4 SUBCHAPTER E

5 MISCELLANEOUS PROVISIONS

6 Sec.

7 6381. Evidence in court proceedings.

8 6382. Guardian ad litem for child in court proceedings.

9 6383. Education and training.

10 6384. Legislative oversight.

11 § 6381. Evidence in court proceedings.

12 (a) General rule.--In addition to the rules of evidence
13 provided under Chapter 63 of Title 42 (relating to juvenile
14 matters), the rules of evidence in this section shall govern in
15 child abuse proceedings in court.

16 (b) Reports of unavailable persons.--Whenever a person
17 required to report under this chapter is unavailable due to
18 death or removal from the jurisdiction of the court, the written
19 report of that person shall be admissible in evidence in any
20 proceedings arising out of child abuse other than proceedings
21 under Title 18 (relating to crimes and offenses). Any hearsay
22 contained in the reports shall be given such weight, if any, as
23 the court determines to be appropriate under all of the
24 circumstances. However, any hearsay contained in a written
25 report shall not of itself be sufficient to support an
26 adjudication based on abuse.

27 (c) Privileged communications.--Except for privileged
28 communications between a lawyer and a client and between a
29 minister and a penitent, a privilege of confidential
30 communication between husband and wife or between any

1 professional person, including but not limited to physicians,
2 psychologists, counselors, employees of hospitals, clinics, day
3 care centers and schools and their patients or clients, shall
4 not constitute grounds for excluding evidence at any proceeding
5 regarding child abuse or the cause of child abuse.

6 (d) Prima facie evidence of abuse.--Evidence that a child
7 has suffered serious physical injury, sexual abuse or serious
8 physical neglect of such a nature as would ordinarily not be
9 sustained or exist except by reason of the acts or omissions of
10 the parent or other person responsible for the welfare of the
11 child shall be prima facie evidence of child abuse by the parent
12 or other person responsible for the welfare of the child.

13 § 6382. Guardian ad litem for child in court proceedings.

14 (a) Appointment.--When a proceeding has been initiated
15 arising out of child abuse, the court shall appoint a guardian
16 ad litem for the child. The guardian ad litem shall be an
17 attorney at law.

18 (b) Powers and duties.--The guardian ad litem shall be given
19 access to all reports relevant to the case and to any reports of
20 examination of the parents or other custodian of the child
21 pursuant to this chapter. The guardian ad litem shall be charged
22 with the representation of the best interests of the child at
23 every stage of the proceeding and shall make such further
24 investigation necessary to ascertain the facts, interview
25 witnesses, examine and cross-examine witnesses, make
26 recommendations to the court and participate further in the
27 proceedings to the degree appropriate for adequately
28 representing the child.

29 (c) Duty of court.--The court shall, upon consideration of
30 the petition of any attorney for the child, order a local child

1 protective service or other agency to establish and implement,
2 fully and promptly, appropriate services, treatment and plans
3 for a child found in need of them. The court shall also, upon
4 consideration of the petition of an attorney for the child,
5 terminate or alter the conditions of any temporary or permanent
6 placement of a child.

7 § 6383. Education and training.

8 The department and each child protective service, both
9 jointly and individually, shall conduct a continuing publicity
10 and education program for the citizens of this Commonwealth
11 aimed at the prevention of child abuse, the identification of
12 abused children and the provision of necessary ameliorative
13 services to abused children and their families. In addition, the
14 department and each child protective service shall conduct an
15 ongoing training and education program for local staff, persons
16 required to make reports and other appropriate persons in order
17 to familiarize those persons with the reporting and
18 investigative procedures for cases of suspected child abuse and
19 the rehabilitative services that are available to children and
20 families.

21 § 6384. Legislative oversight.

22 The Senate Committee on Aging and Youth and the House
23 Committee on Health and Welfare, either jointly or separately,
24 shall review the manner in which this chapter has been
25 administered at the State and local level for the following
26 purposes:

27 (1) Providing information that will aid the General
28 Assembly in its oversight responsibilities.

29 (2) Enabling the General Assembly to determine whether
30 the programs and services mandated by this chapter are

effectively meeting the goals of this chapter.

(3) Assisting the General Assembly in measuring the costs and benefits of this program and the effects and side-effects of mandated program services.

(4) Permitting the General Assembly to determine whether the confidentiality of records mandated by this chapter is being maintained at the State and local level.

(5) Providing information that will permit State and local program administrators to be held accountable for the administration of the programs mandated by this chapter.

Section 3. Amendments to Title 42.--Sections 1725.1(c) 4135(a), 5924, 5945, 5948, 7541(c) and 8127(a) of Title 42 are amended or added to read:

§ 1725.1. Costs.

* * *

(c) Unclassified costs or charges.--The costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

(1) Entering transcript of judgment from another member of the minor judiciary..... \$ 3.00

(2) Marrying each couple, making record thereof, and certificate to the parties..... \$10.00

(3) Granting emergency relief pursuant to [the act of October 7, 1976 (P.L.1090, No.218), known as the "Protection From Abuse Act"] Chapter 61 of Title 23 (relating to protection from abuse)..... \$10.00

(4) Issuing a search warrant (except as provided in subsection (d))..... \$10.00

(5) Any other issuance not otherwise provided for in this subsection..... \$10.00

1 * * *

2 § 4135. Criminal contempt.

3 (a) General rule.--In all cases where a person shall be
4 charged with indirect criminal contempt for violation of a
5 restraining order or injunction issued by a court or judge, the
6 accused shall enjoy:

7 (1) The rights as to admission to bail that are accorded
8 to persons accused of crime.

9 (2) The right to be notified of the accusation and a
10 reasonable time to make a defense, if the alleged contempt is
11 not committed in the immediate view or presence of the court.

12 (3) (i) Upon demand, the right to a speedy and public
13 trial by an impartial jury of the judicial district
14 wherein the contempt shall have been committed.

15 (ii) The requirement of subparagraph (i) shall not
16 be construed to apply to contempts:

17 (A) committed in the presence of the court or so
18 near thereto as to interfere directly with the
19 administration of justice, or to apply to the
20 misbehavior, misconduct, or disobedience of any
21 officer of the court in respect to the writs, orders,
22 or process of the court; [or]

23 (B) subject to 23 Pa.C.S. § 6110 (relating to
24 contempt for violation of order or agreement); or

25 (C) subject to 75 Pa.C.S. § 4108(c) (relating to
26 nonjury criminal contempt proceedings).

27 (4) The right to file with the court a demand for the
28 withdrawal of the judge sitting in the proceeding, if the
29 contempt arises from an attack upon the character or conduct
30 of such judge, and if the attack occurred otherwise than in

1 open court. Upon the filing of any such demand, the judge
2 shall thereupon proceed no further but another judge shall be
3 designated by the court. The demand shall be filed prior to
4 the hearing in the contempt proceeding.

5 * * *

6 § 5924. Spouses as witnesses against each other.

7 (a) General rule.--In a civil matter neither husband nor
8 wife shall be competent or permitted to testify against each
9 other.

10 (b) Exception.--Subsection (a) shall not apply in an action
11 or proceeding:

12 (1) For divorce, including ancillary proceedings for the
13 partition or division of property.

14 (2) For support or relating to the protection or
15 recovery of marital or separate property.

16 (3) For custody or care of children, including actions
17 or proceedings relating to visitation rights and similar
18 matters.

19 (4) Arising under [the act of October 7, 1976 (P.L.1090,
20 No.218), known as the "Protection From Abuse Act."] Chapter
21 61 of Title 23 (relating to protection from abuse).

22 (5) When a statute heretofore or hereafter enacted
23 applicable to the action or proceeding provides either
24 expressly or by necessary implication that spouses may
25 testify therein against each other.

26 § 5945. Confidential communications to school personnel.

27 (a) General rule.--No guidance counselor, school nurse,
28 school psychologist, or home and school visitor in the public
29 schools or in private or parochial schools or other educational
30 institutions providing elementary or secondary education,

1 including any clerical worker of such schools and institutions,
2 who, while in the course of his professional or clerical duties
3 for a guidance counselor, home and school visitor, school nurse
4 or school psychologist, has acquired information from a student
5 in confidence shall be compelled or allowed:

6 (1) without the consent of the student, if the student
7 is 18 years of age or over; or

8 (2) without the consent of his parent or guardian, if
9 the student is under the age of 18 years;

10 to disclose such information in any legal proceeding, trial, or
11 investigation before any government unit.

12 (b) Exemption.--Notwithstanding subsection (a), no such
13 person shall be excused or prevented from complying with [the
14 act of November 26, 1975 (P.L.438, No.124), known as the "Child
15 Protective Services Law."] Chapter 63 of Title 23 (relating to
16 child protective services).

17 § 5948. Confidential communications to divorce counselors.

18 Communications of a confidential character made by a spouse
19 to a qualified professional as defined in 23 Pa.C.S. § 3103
20 (relating to definitions) shall be privileged and inadmissible
21 in evidence in any matrimonial matter unless the party concerned
22 waives this privilege.

23 § 7541. Construction of subchapter.

24 * * *

25 (c) Exceptions.--Relief shall not be available under this
26 subchapter with respect to any:

27 (1) Action wherein a divorce or annulment of marriage is
28 sought except as provided by 23 Pa.C.S. § 3306 (relating to
29 proceedings to determine marital status).

30 (2) Proceeding within the exclusive jurisdiction of a

1 tribunal other than a court.

2 (3) Proceeding involving an appeal from an order of a
3 tribunal.

4 § 8127. Personal earnings exempt from process.

5 (a) General rule.--The wages, salaries and commissions of
6 individuals shall while in the hands of the employer be exempt
7 from any attachment, execution or other process except upon an
8 action or proceeding under Part IV of Title 23 (relating to
9 divorce) or for support or for board for four weeks or less.

10 * * *

11 SECTION 4. CONSTRUCTION OF DIVORCE CODE.--THE PROVISIONS OF <—
12 23 PA.C.S. PART IV (RELATING TO DIVORCE) SHALL APPLY TO ALL
13 CASES, WHETHER THE CAUSE FOR DIVORCE OR ANNULMENT AROSE PRIOR OR
14 SUBSEQUENT TO THE ENACTMENT OF THIS ACT. THE PROVISIONS OF 23
15 PA.C.S. PART IV SHALL NOT AFFECT ANY SUIT OR ACTION PENDING ON
16 THE EFFECTIVE DATE OF THE DIVORCE CODE OF 1980, BUT THE SUIT OR
17 ACTION MAY BE PROCEEDED WITH AND CONCLUDED EITHER UNDER THE LAWS
18 IN EXISTENCE WHEN THE SUIT OR ACTION WAS INSTITUTED,
19 NOTWITHSTANDING THE REPEAL OF SUCH LAWS, OR, UPON APPLICATION
20 GRANTED, UNDER THE PROVISIONS OF 23 PA.C.S. PART IV. THE
21 PROVISIONS OF 23 PA.C.S. PART IV SHALL NOT APPLY TO ANY CASE IN
22 WHICH A DECREE HAS BEEN RENDERED PRIOR TO THE EFFECTIVE DATE OF
23 THE DIVORCE CODE OF 1980. THE PROVISIONS OF 23 PA.C.S. PART IV
24 SHALL NOT AFFECT ANY MARITAL AGREEMENT EXECUTED PRIOR TO THE
25 EFFECTIVE DATE OF THE DIVORCE CODE OF 1980 OR ANY AMENDMENT OR
26 MODIFICATION THERETO.

27 Section 4 5. Repeals.--(a) The following acts and parts of <—
28 acts are repealed:

29 Act of March 13, 1815 (P.L.150, No.109), entitled "An act
30 concerning divorces."

1 Act of May 14, 1857 (P.L.507, No.567), entitled "An act to
2 Legitimate Children Born out of Lawful Wedlock."

3 Act of April 21, 1858 (P.L.413, No.444), entitled "An act
4 relating to Illegitimate Children."

5 Act of March 22, 1865 (P.L.30, No.14), entitled, as amended,
6 "An act to authorize minor husbands and wives, seventeen years
7 of age and older, to join in conveyances of their adult spouses'
8 real estate, and to validate such conveyances heretofore made."

9 Act of April 6, 1868 (P.L.67, No.31), entitled "An act to
10 validate certain marriages and legitimatize the issue thereof."

11 Act of June 2, 1871 (P.L.283, No.263), entitled "An act to
12 authorize married women owning capital stock of any railroad
13 company to sell and transfer the same."

14 Act of February 29, 1872 (P.L.21, No.7), entitled "An act
15 enabling married women to purchase sewing machines."

16 Act of April 1, 1874 (P.L.49, No.9), entitled "An act to
17 authorize married women owning loans of this commonwealth, or of
18 the city of Philadelphia, or capital stock of any corporation of
19 this commonwealth, to sell and transfer the same."

20 Act of May 15, 1874 (P.L.179, No.110), entitled "An act to
21 prevent traffic in children."

22 Act of June 26, 1895 (P.L.316, No.232), entitled "An act
23 relating to husband and wife who are the parents of minor
24 children, enlarging and extending the power, control and
25 authority of the mother over their minor children, under certain
26 circumstances."

27 Act of April 18, 1919 (P.L.67, No.52), entitled "An act to
28 give to women, married and single, the same right as men to be
29 corporators, and, in furtherance of their interests as
30 stockholders, to serve as directors and officers of corporations

1 for profit."

2 Act of April 11, 1927 (P.L.181, No.151), entitled "An act
3 authorizing a married woman, granted a divorce from bed and
4 board, to convey and encumber her real estate, without the
5 joinder of her husband."

6 Act of May 10, 1927 (P.L.884, No.451), entitled, as amended,
7 "An act modifying the common-law rule relating to property
8 hereafter acquired by husband and wife as tenants by entireties,
9 where such husband and wife are subsequently divorced; creating
10 a tenancy in common in such cases; providing for the sale of
11 property held by husband and wife as tenants by entireties where
12 they have been divorced; and directing the distribution of the
13 proceeds of such sale."

14 Act of June 22, 1935 (P.L.450, No.189), entitled "An act to
15 promote public morals; abolishing civil causes of action for
16 alienation of affections, except in certain cases, and breach of
17 promise to marry; making it unlawful to file, cause to be filed,
18 threaten to file, or threaten to cause to be filed any such
19 action; fixing a time for the commencement of such causes of
20 action heretofore accrued; declaring void all future contracts
21 in settlement of such actions; making it unlawful to induce the
22 execution of such a contract or payment thereunder or
23 institution of suit thereon; and providing penalties."

24 Act of May 13, 1949 (P.L.1319, No.390), entitled "An act
25 authorizing the conveyance of the interest of either former
26 spouse after a divorce to the other without the joinder of the
27 other, of such former spouse's interest in real estate which is
28 held by them as tenants by the entireties, and validating such
29 conveyances formerly made."

30 Act of August 22, 1953 (P.L.1344, No.383), known as "The

1 Marriage Law."

2 Act of December 17, 1959 (P.L.1916, No.695), entitled "An act
3 relating to the legitimacy of children born of void or voidable
4 marriages."

5 Act of July 27, 1967 (P.L.186, No.58), entitled "An act
6 imposing liability upon parents for personal injury, or theft,
7 destruction, or loss of property caused by the wilful, tortious
8 acts of children under eighteen years of age, setting forth
9 limitations, and providing procedure for recovery."

10 Act of June 16, 1972 (P.L.472, No.151), entitled "An act
11 authorizing persons eighteen years of age and older to enter
12 into contracts."

13 Act of December 6, 1972 (P.L.1404, No.300), entitled "An act
14 making a person eighteen and older an adult for the purpose of
15 suing and being sued."

16 Act of November 26, 1975 (P.L.438, No.124), known as the
17 "Child Protective Services Law."

18 Act of October 7, 1976 (P.L.1090, No.218), known as the
19 "Protection From Abuse Act."

20 Act of April 2, 1980 (P.L.63, No.26), known as the "Divorce
21 Code."

22 Act of November 5, 1981 (P.L.322, No.115), known as the
23 "Custody and Grandparents Visitation Act."

24 42 Pa.C.S. Ch. 53, Subch. C (relating to child custody
25 jurisdiction).

26 (b) All other acts and parts of acts are repealed insofar as
27 they are inconsistent with this act.

28 Section 5 6. Effective date.--This act shall take effect in <—
29 90 days.