

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1781 Session of 1989

INTRODUCED BY DALEY, STUBAN, ROBINSON, STISH AND CORRIGAN, JUNE 28, 1989

AS REPORTED FROM COMMITTEE ON YOUTH AND AGING, HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 13, 1989

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, providing for denial of FURTHER
3 PROVIDING FOR custody and visitation in certain cases. <—

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

6 Section 1. Title 23 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read: <—

8 § 5306.1. Denial of custody or visitation.

9 (a) Custody. The court shall not award legal custody,
10 partial custody, physical custody or shared custody to a parent
11 in any of the following circumstances:

12 (1) The court determines, after a hearing, that the
13 parent has committed child abuse, as defined in section 3 of
14 the act of November 26, 1975 (P.L. 438, No.124), known as the
15 Child Protective Services Law.

16 (2) The parent has been convicted of, or pleaded guilty
17 or no contest to, an offense under:

1           ~~(i) 18 Pa.C.S. § 2904 (relating to interference with~~  
2 ~~custody of children);~~

3           ~~(ii) 18 Pa.C.S. § 3121 (relating to rape), where the~~  
4 ~~victim is under 18 years of age;~~

5           ~~(iii) 18 Pa.C.S. § 3122 (relating to statutory~~  
6 ~~rape);~~

7           ~~(iv) 18 Pa.C.S. § 3123 (relating to involuntary~~  
8 ~~deviate sexual intercourse), where the victim is under 18~~  
9 ~~years of age;~~

10          ~~(v) 18 Pa.C.S. § 3124 (relating to voluntary deviate~~  
11 ~~sexual intercourse), where the other party to the~~  
12 ~~intercourse is under 18 years of age;~~

13          ~~(vi) 18 Pa.C.S. § 3126 (relating to indecent~~  
14 ~~assault), where the victim is under 18 years of age; or~~

15          ~~(vii) 18 Pa.C.S. § 3127 (relating to indecent~~  
16 ~~exposure), where the victim is under 18 years of age.~~

17          ~~(b) Visitation. If subsection (a)(1) or (2) applies, the~~  
18 ~~court shall not award visitation to a parent unless all of the~~  
19 ~~following apply:~~

20           ~~(1) The parent establishes by a preponderance of the~~  
21 ~~evidence that the child is emotionally prepared for the~~  
22 ~~visitation.~~

23           ~~(2) The visitation is conditioned upon the presence of a~~  
24 ~~court appointed individual.~~

25          SECTION 1. SECTION 5303 OF TITLE 23 OF THE PENNSYLVANIA  
26 CONSOLIDATED STATUTES IS AMENDED TO READ:

27 § 5303. AWARD OF [SOLE] CUSTODY, PARTIAL CUSTODY OR VISITATION.

28          (A) GENERAL RULE.--IN MAKING AN ORDER FOR CUSTODY, PARTIAL  
29 CUSTODY OR VISITATION TO EITHER PARENT [INDIVIDUALLY], THE COURT  
30 SHALL CONSIDER, AMONG OTHER FACTORS, WHICH PARENT IS MORE LIKELY

1 TO ENCOURAGE, PERMIT AND ALLOW FREQUENT AND CONTINUING CONTACT  
2 AND PHYSICAL ACCESS BETWEEN THE NONCUSTODIAL PARENT AND THE  
3 CHILD. [THE COURT SHALL AWARD SOLE CUSTODY WHEN IT IS IN THE  
4 BEST INTEREST OF THE CHILD.] IN ADDITION, THE COURT SHALL  
5 CONSIDER EACH PARENT AND ADULT HOUSEHOLD MEMBER'S PRESENT AND  
6 PAST VIOLENT OR ABUSIVE CONDUCT WHICH MAY INCLUDE, BUT IS NOT  
7 LIMITED TO, ABUSIVE CONDUCT AS DEFINED UNDER THE ACT OF OCTOBER  
8 7, 1976 (P.L.1090, NO.218), KNOWN AS THE PROTECTION FROM ABUSE  
9 ACT.

10 (B) CONSIDERATION OF CRIMINAL CONVICTION.--IF THE PARENT HAS  
11 BEEN CONVICTED OF OR HAS PLEADED GUILTY OR NO CONTEST TO AN  
12 OFFENSE SET FORTH BELOW, THE COURT SHALL APPOINT AND TAKE  
13 TESTIMONY FROM A QUALIFIED PROFESSIONAL CONCERNING THE PROVISION  
14 OF COUNSELING AND SHALL DETERMINE THAT THE PARENT DOES NOT POSE  
15 A THREAT OF HARM TO THE CHILD BEFORE MAKING AN ORDER OF CUSTODY,  
16 PARTIAL CUSTODY OR VISITATION:

17 (1) 18 PA.C.S. CH. 25 (RELATING TO CRIMINAL HOMICIDE);

18 (2) 18 PA.C.S. § 2901 (RELATING TO KIDNAPPING);

19 (3) 18 PA.C.S. § 2902 (RELATING TO UNLAWFUL RESTRAINT);

20 (4) 18 PA.C.S. § 3121 (RELATING TO RAPE);

21 (5) 18 PA.C.S. § 3122 (RELATING TO STATUTORY RAPE);

22 (6) 18 PA.C.S. § 3123 (RELATING TO INVOLUNTARY DEVIATE

23 SEXUAL INTERCOURSE);

24 (7) 18 PA.C.S. § 3126 (RELATING TO INDECENT ASSAULT);

25 (8) 18 PA.C.S. § 4302 (RELATING TO INCEST);

26 (9) 18 PA.C.S. § 4304 (RELATING TO ENDANGERING WELFARE

27 OF CHILDREN);

28 (10) 18 PA.C.S. § 5902(B) (RELATING TO PROSTITUTION AND

29 RELATED OFFENSES); OR

30 (11) 18 PA.C.S. § 6312 (RELATING TO SEXUAL ABUSE OF

1 CHILDREN).

2 (C) COUNSELING.--COUNSELING, REQUIRED IN ACCORDANCE WITH  
3 SUBSECTION (B), SHALL INCLUDE A PROGRAM OF TREATMENT OR  
4 INDIVIDUAL THERAPY DESIGNED TO REHABILITATE A PARENT WHICH  
5 ADDRESSES, BUT IS NOT LIMITED TO, ISSUES REGARDING PHYSICAL AND  
6 SEXUAL ABUSE, DOMESTIC VIOLENCE, THE PSYCHOLOGY OF THE OFFENDER,  
7 AND THE EFFECTS OF ABUSE ON THE VICTIM. IF THE COURT AWARDS  
8 CUSTODY, PARTIAL CUSTODY OR VISITATION TO AN OFFENDING PARENT  
9 DESCRIBED IN SUBSECTION (B), THE COURT MAY REQUIRE SUBSEQUENT,  
10 PERIODIC COUNSELING AND REPORTS ON THE REHABILITATION OF THE  
11 OFFENDING PARENT AND THE WELL-BEING OF THE CHILD FOLLOWING AN  
12 ORDER RELATING TO CUSTODY, PARTIAL CUSTODY OR VISITATION. IF  
13 UPON REVIEW OF A SUBSEQUENT REPORT OR REPORTS, THE COURT  
14 DETERMINES THAT THE OFFENDING PARENT POSES A THREAT OF HARM TO  
15 THE CHILD, THE COURT MAY SCHEDULE A HEARING AND MODIFY THE ORDER  
16 OF CUSTODY OR VISITATION TO PROTECT THE WELL-BEING OF THE CHILD.

17 (D) SOLE CUSTODY.--THE COURT SHALL AWARD SOLE CUSTODY WHEN  
18 IT IS IN THE BEST INTEREST OF THE CHILD.

19 Section 2. This act shall apply to actions under 23 Pa.C.S.  
20 Ch. 53 (relating to custody) which are commenced on or after the  
21 effective date of this act regardless of when the abuse or  
22 offense took place.

23 Section 3. This act shall take effect in 60 days.