

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 463 Session of 2009

INTRODUCED BY BELFANTI, FAIRCHILD, GERGELY, LEVDANSKY, BRENNAN, BARRAR, BEAR, BENNINGHOFF, BOYD, CAUSER, CONKLIN, CREIGHTON, CUTLER, DENLINGER, DePASQUALE, FABRIZIO, FLECK, FRANKEL, GEIST, GIBBONS, GROVE, HANNA, HARHART, HARKINS, HESS, HORNAMAN, KORTZ, KOTIK, MARSHALL, MELIO, MILLER, MURT, MUSTIO, MYERS, PHILLIPS, PRESTON, READSHAW, REICHLEY, SAYLOR, SCAVELLO, SIPTROTH, SOLOBAY, SONNEY, STERN, WALKO, WANSACZ, YOUNGBLOOD, GINGRICH, ROCK, PETRI AND DEASY, FEBRUARY 18, 2009

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 18, 2009

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
 2 Consolidated Statutes, further providing for definitions; and
 3 providing for custody of children.

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

6 Section 1. The definition of "shared custody" in section
 7 5302 of Title 23 of the Pennsylvania Consolidated Statutes is
 8 amended and the section is amended by adding definitions to
 9 read:

10 § 5302. Definitions.

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

14 * * *

15 "Joint custody." Joint legal and physical custody. An award

1 of joint legal and physical custody obligates the parties to
2 exchange information concerning the health, education and
3 welfare of the minor child, and, unless allocated, apportioned
4 or decreed, the parents or parties shall confer with one another
5 in the exercise of decision-making rights, responsibilities and
6 authority.

7 "Joint legal custody." The state in which the parents or
8 parties share, have voluntarily allocated or the court has
9 decreed between them, the decision-making rights,
10 responsibilities and authority relating to the health, education
11 and welfare of a child.

12 "Joint physical custody." The state in which the court has
13 entered an order awarding each of the parents significant
14 periods of time in which a child resides with or is under the
15 care and supervision of each of the parents or parties. Joint
16 physical custody shall be shared by the parents in such a way as
17 to assure a child of frequent and continuing contact with both
18 parents.

19 * * *

20 ["Shared custody." An order awarding shared legal or shared
21 physical custody, or both, of a child in such a way as to assure
22 the child of frequent and continuing contact with and physical
23 access to both parents.]

24 * * *

25 Section 2. Section 5303 of Title 23 is amended to read:

26 § 5303. Award of custody, partial custody or visitation.

27 (a) General rule.--An order for joint custody shall be
28 awarded by the court unless the court finds that joint custody
29 is not in the best interest of the child. There shall be a
30 rebuttable presumption that an award of joint custody is in the

1 best interest of the child. The court shall state on record the
2 reason for any award other than an award of joint custody.

3 (a.1) Factors for court's consideration.--In making an order
4 for custody, partial custody or visitation to either parent, the
5 court shall consider the following factors:

6 (1) [In making an order for custody or partial custody,
7 the court shall consider the] The preference of the child as
8 well as any other factor which legitimately impacts the
9 child's physical, intellectual and emotional well-being.

10 (2) [In making an order for custody, partial custody or
11 visitation to either parent, the court shall consider, among
12 other factors, which] Which parent is more likely to
13 encourage, permit and allow frequent and continuing contact
14 and physical access between the noncustodial parent and the
15 child as evidenced in parenting plan proposals.

16 (3) [The court shall consider each] Each parent and
17 adult household member's present and past violent or abusive
18 conduct which may include, but is not limited to, abusive
19 conduct as defined under the act of October 7, 1976 (P.L.
20 1090, No.218), known as the Protection From Abuse Act.

21 (4) The likelihood of the parents to cooperate on child-
22 care matters and to make parenting decisions jointly.

23 (5) The ability and intent of each parent to facilitate
24 joint custody access as well as to arrange geographic
25 convenience or readily available transportation as relates to
26 practical considerations of physical parenting.

27 (6) The recommendations of the representative of the
28 child, if the child has a representative.

29 (b) Consideration of criminal conviction.--If a parent has
30 been convicted of or has pleaded guilty or no contest to an

1 offense as set forth below, the court shall consider such
2 criminal conduct and shall determine that the parent does not
3 pose a threat of harm to the child before making an order of
4 custody, partial custody or visitation to that parent:

5 (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

6 (2) 18 Pa.C.S. § 2901 (relating to kidnapping);

7 (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);

8 (4) 18 Pa.C.S. § 3121 (relating to rape);

9 (5) 18 Pa.C.S. § 3122.1 (relating to statutory sexual
10 assault);

11 (6) 18 Pa.C.S. § 3123 (relating to involuntary deviate
12 sexual intercourse);

13 (7) 18 Pa.C.S. § 3124.1 (relating to sexual assault);

14 (8) 18 Pa.C.S. § 3125 (relating to aggravated indecent
15 assault);

16 (9) 18 Pa.C.S. § 3126 (relating to indecent assault);

17 (10) 18 Pa.C.S. § 3127 (relating to indecent exposure);

18 (11) 18 Pa.C.S. § 4302 (relating to incest);

19 (12) 18 Pa.C.S. § 4304 (relating to endangering welfare
20 of children);

21 (13) 18 Pa.C.S. § 5902(b) (relating to prostitution and
22 related offenses); or

23 (14) 18 Pa.C.S. § 6312 (relating to sexual abuse of
24 children).

25 (b.1) Consideration of criminal charge.--

26 (1) A parent who has obtained information under 42
27 Pa.C.S. § 1904 (relating to availability of criminal charge
28 information in child custody proceedings) of the charge filed
29 against the other parent for an offense listed in paragraph

30 (2) may move for a temporary custody order or to modify an

1 existing custody, partial custody or visitation order. The
2 temporary custody or modification hearing shall be scheduled
3 expeditiously.

4 (2) In evaluating any request for temporary custody or
5 modification of a custody, partial custody or visitation
6 order, the court shall consider whether the parent who is or
7 has been charged with an offense listed below poses a risk of
8 harm to the child:

9 (i) 18 Pa.C.S. Ch. 25;

10 (ii) 18 Pa.C.S. § 2702 (relating to aggravated
11 assault);

12 (iii) 18 Pa.C.S. § 2706 (relating to terroristic
13 threats);

14 (iv) 18 Pa.C.S. § 2709.1 (relating to stalking);

15 (v) 18 Pa.C.S. § 2901;

16 (vi) 18 Pa.C.S. § 2902;

17 (vii) 18 Pa.C.S. § 2903 (relating to false
18 imprisonment);

19 (viii) 18 Pa.C.S. § 3121;

20 (ix) 18 Pa.C.S. § 3122.1;

21 (x) 18 Pa.C.S. § 3123;

22 (xi) 18 Pa.C.S. § 3124.1;

23 (xii) 18 Pa.C.S. § 3125;

24 (xiii) 18 Pa.C.S. § 3126;

25 (xiv) 18 Pa.C.S. § 3127;

26 (xv) 18 Pa.C.S. § 3301 (relating to arson and
27 related offenses);

28 (xvi) 18 Pa.C.S. § 4302;

29 (xvii) 18 Pa.C.S. § 4304;

30 (xviii) 18 Pa.C.S. § 6312; and

1 (xix) 23 Pa.C.S. § 6114 (relating to contempt for
2 violation of order or agreement).

3 (3) Failure to apply for information under 42 Pa.C.S. §
4 1904 or to act under this subsection shall not prejudice any
5 parent in a custody or visitation proceeding.

6 (b.2) Parent convicted of murder.--No court shall award
7 custody, partial custody or visitation to a parent who has been
8 convicted of murder under 18 Pa.C.S. § 2502(a) (relating to
9 murder of the first degree) of the other parent of the child who
10 is the subject of the order, unless the child is of suitable age
11 and consents to the order.

12 (c) Counseling.--In making a determination to award custody,
13 partial custody or visitation pursuant to subsection (b), the
14 court shall appoint a qualified professional to provide
15 counseling to an offending parent described in subsection (b)
16 and shall take testimony from that professional regarding the
17 provision of such counseling prior to issuing any order of
18 custody, partial custody or visitation. Counseling, required in
19 accordance with this subsection, shall include a program of
20 treatment or individual therapy designed to rehabilitate a
21 parent which addresses, but is not limited to, issues regarding
22 physical and sexual abuse, domestic violence, the psychology of
23 the offender and the effects of abuse on the victim. If the
24 court awards custody, partial custody or visitation to an
25 offending parent described in subsection (b), the court may
26 require subsequent periodic counseling and reports on the
27 rehabilitation of the offending parent and the well-being of the
28 child following an order relating to custody, partial custody or
29 visitation. If, upon review of a subsequent report or reports,
30 the court determines that the offending parent poses a threat of

1 harm to the child, the court may schedule a hearing and modify
2 the order of custody or visitation to protect the well-being of
3 the child.

4 (d) Sole custody.--The court shall award sole custody when
5 it finds, after due consideration of the factors set forth under
6 subsection (a.1), that sole custody is in the best interest of
7 the child.

8 Section 3. Section 5304 of Title 23 is repealed:

9 [§ 5304. Award of shared custody.

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

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

13 (2) when the parties have agreed to an award of shared
14 custody; or

15 (3) in the discretion of the court.]

16 Section 4. Title 23 is amended by adding a section to read:

17 § 5304.1. Relationship of joint custody to child support.

18 An award of joint custody shall not by itself diminish nor
19 increase the responsibility of each parent to provide for the
20 financial support of the child. Joint custody shall not be
21 decreed exclusively for the purpose of affecting child support,
22 and joint custody by itself shall not constitute sufficient
23 grounds for modification of a support order.

24 Section 5. Sections 5305(a), 5306 and 5309 of Title 23 are
25 amended to read:

26 § 5305. Counseling.

27 (a) General rule.--The court [may] shall require the parents
28 to attend counseling sessions except where the parents have
29 agreed to a custody award, in which case counseling is at the
30 court's discretion, and [may] shall, where the court has ordered

1 counseling, consider the recommendations of the counselors prior
2 to awarding sole or [shared] joint custody. These counseling
3 sessions may include, but shall not be limited to, discussions
4 of the responsibilities and decisionmaking arrangements involved
5 in both sole and [shared] joint custody and the suitability of
6 each arrangement to the capabilities of each parent or both
7 parents.

8 * * *

9 § 5306. Plan for implementation of custody order.

10 (a) Mandatory plan.--In awarding joint custody, the court
11 shall require the parents to submit a parenting plan. The court
12 may order mediation where appropriate to assist the parents in
13 producing an individual or a joint parenting plan. In the event
14 the parents fail to submit an agreed-to parenting plan, the
15 court shall produce the plan after consultation with the
16 mediator. The court shall give consideration to any individual
17 parenting plan produced by either or both parents. The parenting
18 plan shall include provisions covering matters relevant to the
19 care and custody of the child, including, but not limited to:

- 20 (1) the child's education and religious training;
21 (2) the child's health care;
22 (3) the child's personal care and control, including
23 parenting time, holidays, vacations and child care;
24 (4) transportation arrangements;
25 (5) a procedure by which proposed changes, disputes and
26 alleged breaches of the parenting plan may be mediated,
27 arbitrated, adjudicated or otherwise resolved; and
28 (6) any other factors the court deems to be in the best
29 interest of the child.

30 (b) Enforcement of order.--In making an order of joint

1 custody, the court shall specify the right of each parent to the
2 physical control of the child in sufficient detail to enable a
3 parent deprived of that control to enforce the court order and
4 to enable law enforcement authorities to implement laws for
5 relief of parental kidnapping.

6 (c) Receipt of public welfare.--One parent may be designated
7 as a public welfare recipient in situations where public welfare
8 aid is deemed necessary and appropriate.

9 (d) Discretionary plan.--The court, in its discretion, may
10 require the parents to submit to the court a plan for the
11 implementation of any other type of custody [order made] ordered
12 under this subchapter. Upon the request of either parent or the
13 court, the domestic relations section of the court or other
14 party or agency approved by the court shall assist in the
15 formulation and implementation of the plan.

16 § 5309. Access to records and information.

17 (a) General rule.--Except as provided in subsections (b) and
18 (c), each parent shall be provided access to all the medical,
19 dental, religious or school records of the child, the residence
20 address of the child and of the other parent and any other
21 information that the [court deems necessary] other parent has or
22 has access to.

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

27 (c) Nondisclosure of confidential information.--The court
28 shall not order that the address of a shelter for battered
29 spouses and their dependent children or otherwise confidential
30 information of a domestic violence counselor be disclosed to the

1 defendant or his counsel or any party to the proceedings.

2 (d) Equal access to records by both parents.--

3 Notwithstanding any other provision of law, access to any
4 records and information pertaining to the child shall not be
5 denied to any parent for the sole reason that the parent is not
6 a custodial parent of the child.

7 Section 6. Section 5310 of Title 23, amended October 9, 2008
8 (P.L.1522, No.127), is amended to read:

9 § 5310. Modification of existing custody orders.

10 Except as provided in 51 Pa.C.S. § 4109 (relating to child
11 custody proceedings during military deployment), any order for
12 the custody of the child of a marriage or adoption entered by a
13 court in this Commonwealth or any state may, subject to the
14 jurisdictional requirements set forth in Chapter 54 (relating to
15 uniform child custody jurisdiction and enforcement), be modified
16 at any time to an order of [shared] sole custody or joint
17 custody in accordance with this subchapter to reflect changes in
18 circumstances that make the prior custody order insufficient or
19 ineffective.

20 Section 7. This act shall take effect in 60 days.