

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1639 Session of
2009

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KORTZ, FARRY, MELIO AND CUTLER, JUNE 8, 2009

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, SEPTEMBER
21, 2010

AN ACT

1 Amending Titles 23 (Domestic Relations) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, further providing for contempt for noncompliance
4 with visitation or partial custody order and for child
5 custody; and making conforming amendments.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 4346, Chapter 53 and Subchapter A
9 headings and sections 5301, 5302, 5303, 5304, 5305, 5306, 5307,
10 5308, 5309, 5310, 5311, 5312, 5313, 5314 and 5315 of Title 23 of
11 the Pennsylvania Consolidated Statutes are repealed:

12 [§ 4346. Contempt for noncompliance with visitation or partial
13 custody order.

14 (a) General rule.--A party who willfully fails to comply
15 with any visitation or partial custody order may, as prescribed
16 by general rule, be adjudged in contempt. Contempt shall be

1 punishable by any one or more of the following:

2 (1) Imprisonment for a period not to exceed six months.

3 (2) A fine not to exceed \$500.

4 (3) Probation for a period not to exceed six months.

5 (4) An order for nonrenewal, suspension or denial of
6 operating privilege pursuant to section 4355 (relating to
7 denial or suspension of licenses).

8 (b) Condition for release.--An order committing a person to
9 jail under this section shall specify the condition which, when
10 fulfilled, will result in the release of the obligor.

11 CHAPTER 53

12 CUSTODY

13 SUBCHAPTER A

14 GENERAL PROVISIONS

15 § 5301. Declaration of policy.

16 The General Assembly declares that it is the public policy of
17 this Commonwealth, when in the best interest of the child, to
18 assure a reasonable and continuing contact of the child with
19 both parents after a separation or dissolution of the marriage
20 and the sharing of the rights and responsibilities of child
21 rearing by both parents and continuing contact of the child or
22 children with grandparents when a parent is deceased, divorced
23 or separated.

24 § 5302. Definitions.

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

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

29 "Legal custody." The legal right to make major decisions
30 affecting the best interest of a minor child, including, but not

1 limited to, medical, religious and educational decisions.

2 "Partial custody." The right to take possession of a child
3 away from the custodial parent for a certain period of time.

4 "Physical custody." The actual physical possession and
5 control of a child.

6 "Shared custody." An order awarding shared legal or shared
7 physical custody, or both, of a child in such a way as to assure
8 the child of frequent and continuing contact with and physical
9 access to both parents.

10 "Visitation." The right to visit a child. The term does not
11 include the right to remove a child from the custodial parent's
12 control.

13 § 5303. Award of custody, partial custody or visitation.

14 (a) General rule.--

15 (1) In making an order for custody or partial custody,
16 the court shall consider the preference of the child as well
17 as any other factor which legitimately impacts the child's
18 physical, intellectual and emotional well-being.

19 (2) In making an order for custody, partial custody or
20 visitation to either parent, the court shall consider, among
21 other factors, which parent is more likely to encourage,
22 permit and allow frequent and continuing contact and physical
23 access between the noncustodial parent and the child.

24 (3) The court shall consider each parent and adult
25 household member's present and past violent or abusive
26 conduct which may include, but is not limited to, abusive
27 conduct as defined under the act of October 7, 1976

28 (P.L.1090, No.218), known as the Protection From Abuse Act.

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

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

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

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

(c) Counseling.--In making a determination to award custody, partial custody or visitation pursuant to subsection (b), the court shall appoint a qualified professional to provide counseling to an offending parent described in subsection (b) and shall take testimony from that professional regarding the provision of such counseling prior to issuing any order of custody, partial custody or visitation. Counseling, required in accordance with this subsection, shall include a program of treatment or individual therapy designed to rehabilitate a parent which addresses, but is not limited to, issues regarding physical and sexual abuse, domestic violence, the psychology of the offender and the effects of abuse on the victim. If the court awards custody, partial custody or visitation to an offending parent described in subsection (b), the court may require subsequent periodic counseling and reports on the rehabilitation of the offending parent and the well-being of the child following an order relating to custody, partial custody or visitation. If, upon review of a subsequent report or reports, 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 is in the best interest of the child.

6 § 5304. Award of shared custody.

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

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

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

12 (3) in the discretion of the court.

13 § 5305. Counseling.

14 (a) General rule.--The court may require the parents to
15 attend counseling sessions and may consider the recommendations
16 of the counselors prior to awarding sole or shared custody.
17 These counseling sessions may include, but shall not be limited
18 to, discussions of the responsibilities and decisionmaking
19 arrangements involved in both sole and shared custody and the
20 suitability of each arrangement to the capabilities of each
21 parent or both parents.

22 (b) Temporary custody.--The court may temporarily award
23 custody to either parent or both parents pending resolution of
24 any counseling.

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

28 § 5306. Plan for implementation of custody order.

29 The court, in its discretion, may require the parents to
30 submit to the court a plan for the implementation of any custody

1 order made under this subchapter. Upon the request of either
2 parent or the court, the domestic relations section of the court
3 or other party or agency approved by the court shall assist in
4 the formulation and implementation of the plan.

5 § 5307. Denial of custody under agreement or plan.

6 When the court declines to enter an order awarding custody
7 either as agreed to by the parents or under the plan developed
8 by the parents, the court shall state its reasons for denial on
9 the record.

10 § 5308. Removal of party or child from jurisdiction.

11 If either party intends to or does remove himself or the
12 child from this Commonwealth after a custody order has been
13 made, the court, on its own motion or upon motion of either
14 party, may review the existing custody order.

15 § 5309. Access to records and information.

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

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

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

30 § 5310. Modification of existing custody orders.

1 Except as provided in 51 Pa.C.S. § 4109 (relating to child
2 custody proceedings during military deployment), any order for
3 the custody of the child of a marriage entered by a court in
4 this Commonwealth or any state may, subject to the
5 jurisdictional requirements set forth in Chapter 54 (relating to
6 uniform child custody jurisdiction and enforcement), be modified
7 at any time to an order of shared custody in accordance with
8 this subchapter.

9 § 5311. When parent deceased.

10 If a parent of an unmarried child is deceased, the parents or
11 grandparents of the deceased parent may be granted reasonable
12 partial custody or visitation rights, or both, to the unmarried
13 child by the court upon a finding that partial custody or
14 visitation rights, or both, would be in the best interest of the
15 child and would not interfere with the parent-child
16 relationship. The court shall consider the amount of personal
17 contact between the parents or grandparents of the deceased
18 parent and the child prior to the application.

19 § 5312. When parents' marriage is dissolved or parents are
20 separated.

21 In all proceedings for dissolution, subsequent to the
22 commencement of the proceeding and continuing thereafter or when
23 parents have been separated for six months or more, the court
24 may, upon application of the parent or grandparent of a party,
25 grant reasonable partial custody or visitation rights, or both,
26 to the unmarried child if it finds that visitation rights or
27 partial custody, or both, would be in the best interest of the
28 child and would not interfere with the parent-child
29 relationship. The court shall consider the amount of personal
30 contact between the parents or grandparents of the party and the

1 child prior to the application.

2 § 5313. When grandparents may petition.

3 (a) Partial custody and visitation.--If an unmarried child
4 has resided with his grandparents or great-grandparents for a
5 period of 12 months or more and is subsequently removed from the
6 home by his parents, the grandparents or great-grandparents may
7 petition the court for an order granting them reasonable partial
8 custody or visitation rights, or both, to the child. The court
9 shall grant the petition if it finds that visitation rights
10 would be in the best interest of the child and would not
11 interfere with the parent-child relationship.

12 (b) Physical and legal custody.--A grandparent has standing
13 to bring a petition for physical and legal custody of a
14 grandchild. If it is in the best interest of the child not to be
15 in the custody of either parent and if it is in the best
16 interest of the child to be in the custody of the grandparent,
17 the court may award physical and legal custody to the
18 grandparent. This subsection applies to a grandparent:

19 (1) who has genuine care and concern for the child;

20 (2) whose relationship with the child began with the
21 consent of a parent of the child or pursuant to an order of
22 court; and

23 (3) who for 12 months has assumed the role and
24 responsibilities of the child's parent, providing for the
25 physical, emotional and social needs of the child, or who
26 assumes the responsibility for a child who has been
27 determined to be a dependent child pursuant to 42 Pa.C.S. Ch.
28 63 (relating to juvenile matters) or who assumes or deems it
29 necessary to assume responsibility for a child who is
30 substantially at risk due to parental abuse, neglect, drug or

1 alcohol abuse or mental illness. The court may issue a
2 temporary order pursuant to this section.

3 § 5314. Exception for adopted children.

4 Sections 5311 (relating to when parent deceased), 5312
5 (relating to when parents' marriage is dissolved or parents are
6 separated) and 5313 (relating to when child has resided with
7 grandparents) shall not apply if the child has been adopted by a
8 person other than a stepparent or grandparent. Any visitation
9 rights granted pursuant to this section prior to the adoption of
10 the child shall be automatically terminated upon such adoption.

11 § 5315. Court-appointed child custody health care or behavioral
12 health practitioners.

13 No party to a child custody matter in which the court has
14 appointed a licensed health care or behavioral health
15 practitioner to assist the court by conducting an examination or
16 evaluation of the parties involved or making a recommendation
17 concerning a child custody agreement or order may be permitted
18 to file a complaint against the practitioner with the
19 practitioner's State licensing board prior to the final
20 agreement or order being issued and for 60 days thereafter. As
21 used in this section, "licensed health care or behavioral health
22 practitioner" means a person who is licensed, certified,
23 accredited or otherwise regulated by the Commonwealth to provide
24 health care or behavioral health services.]

25 Section 2. Title 23 is amended by adding a chapter to read:

26 CHAPTER 53

27 CHILD CUSTODY

28 Sec.

29 5321. Scope of chapter.

30 5322. Definitions.

1 5323. Award of custody.
2 5324. Standing for any form of physical custody or legal
3 custody.
4 5325. Standing for partial physical custody and supervised
5 physical custody.
6 5326. Effect of adoption.
7 5327. Presumption in cases concerning primary physical custody.
8 5328. Factors to consider when awarding custody.
9 5329. Consideration of criminal conviction.
10 5330. Consideration of criminal charge.
11 5331. Parenting plan.
12 5332. Informational programs.
13 5333. Counseling as part of order.
14 5334. Guardian ad litem for child.
15 5335. Counsel for child.
16 5336. Access to records and information.
17 5337. Relocation.
18 5338. Modification of existing order.
19 5339. Award of counsel fees, costs and expenses.
20 5340. Court-appointed child custody health care or behavioral
21 health practitioners.
22 § 5321. Scope of chapter.
23 This chapter applies to disputes relating to child custody
24 matters.
25 § 5322. Definitions.
26 (A) THIS CHAPTER.--The following words and phrases when used ←
27 in this chapter shall have the meanings given to them in this
28 ~~section~~ SUBSECTION unless the context clearly indicates ←
29 otherwise:
30 "Abuse." As defined in section 6102 (relating to

1 definitions).

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

3 "Agency." Any organization, society, institution or other
4 entity, including the county children and youth social service
5 agency or court facility, which provides for the care of the
6 child.

7 "Child." An unemancipated individual under 18 years of age.

8 "Legal custody." The right to make major decisions on behalf
9 of the child, including, but not limited to, medical, religious
10 and educational decisions.

11 "Parental duties." Includes meeting the physical, emotional
12 and social needs of the child.

13 "Partial physical custody." The right to assume physical
14 custody of the child for less than a majority of the time.

15 "Physical custody." The actual physical possession and
16 control of a child.

17 "Primary physical custody." The right to assume physical
18 custody of the child for the majority of time.

19 "Relocation." A change in a residence of the child which
20 significantly impairs the ability of a nonrelocating party to
21 exercise custodial rights.

22 "Shared legal custody." The right of more than one
23 individual to legal custody of the child.

24 "Shared physical custody." The right of more than one
25 individual to assume physical custody of the child, each having
26 significant periods of physical custodial time with the child.

27 "Sole legal custody." The right of one individual to
28 exclusive legal custody of the child.

29 "Sole physical custody." The right of one individual to
30 exclusive physical custody of the child.

1 "Supervised physical custody." Custodial time during which
2 an agency or an adult designated by the court or agreed upon by
3 the parties monitors the interaction between the child and the
4 individual with those rights.

5 (B) OTHER LAW.--IN A STATUTORY PROVISION OTHER THAN IN THIS
6 CHAPTER, WHEN THE TERM "VISITATION" IS USED IN REFERENCE TO
7 CHILD CUSTODY, THE TERM MAY BE CONSTRUED TO MEAN:

8 (1) PARTIAL PHYSICAL CUSTODY;

9 (2) SHARED PHYSICAL CUSTODY; OR

10 (3) SUPERVISED PHYSICAL CUSTODY.

11 § 5323. Award of custody.

12 (a) Types of award.--After considering the factors set forth
13 in section 5328 (relating to factors to consider when awarding
14 custody), the court may award any of the following types of
15 custody if it is in the best interest of the child:

16 (1) Shared physical custody.

17 (2) Primary physical custody.

18 (3) Partial physical custody.

19 (4) Sole physical custody.

20 (5) Supervised physical custody.

21 (6) Shared legal custody.

22 (7) Sole legal custody.

23 (b) Interim award.--The court may issue an interim award of
24 custody to a party who has standing under section 5324 (relating
25 to standing for any form of physical custody or legal custody)
26 or 5325 (relating to standing for partial physical custody and
27 supervised physical custody), in the manner prescribed by the
28 Pennsylvania Rules of Civil Procedure governing special relief
29 in custody matters.

30 (c) Notice.--Any custody order shall include notice of a

1 party's obligations under section 5337 (relating to relocation).

2 (d) Reasons for award.--The court shall delineate the
3 reasons for its decision on the record in open court or in a
4 written opinion or order.

5 (e) Safety conditions.--After considering the factors under
6 section 5328(a)(2), if the court finds that there is an ongoing
7 risk of harm to the child or an abused party and awards any form
8 of custody to a party who committed the abuse or who has a
9 household member who committed the abuse, the court shall
10 include in the custody order safety conditions designed to
11 protect the child or the abused party.

12 (f) Enforcement.--In awarding custody, the court shall
13 specify the terms and conditions of the award in sufficient
14 detail to enable a party to enforce the court order through law
15 enforcement authorities.

16 (g) Contempt for noncompliance with any custody order.--

17 (1) A party who willfully fails to comply with any
18 custody order may, as prescribed by general rule, be adjudged
19 in contempt. Contempt shall be punishable by any one or more
20 of the following:

21 (i) Imprisonment for a period of not more than six
22 months.

23 (ii) A fine of not more than \$500.

24 (iii) Probation for a period of not more than six
25 months.

26 (iv) An order for nonrenewal, suspension or denial
27 of operating privilege under section 4355 (relating to
28 denial or suspension of licenses).

29 (v) Counsel fees and costs.

30 (2) An order committing an individual to jail under this

section shall specify the condition which, when fulfilled,
will result in the release of that individual.

(h) Parties in same residence.--Parties living separate and
apart in the same residence may seek relief under this chapter,
but any custody order made under such a circumstance shall be
effective only upon:

(1) one party physically vacating the residence; or

(2) an order awarding one party exclusive possession of
the residence.

§ 5324. Standing for any form of physical custody or legal
custody.

The following individuals may file an action under this
chapter for any form of physical custody or legal custody:

(1) A parent of the child.

(2) A person who stands in loco parentis to the child.

(3) A grandparent of the child who is not in loco
parentis to the child:

(i) whose relationship with the child began either
with the consent of a parent of the child or under a
court order;

(ii) who assumes or is willing to assume
responsibility for the child; and

(iii) when one of the following conditions is met:

(A) the child has been determined to be a
dependent child under 42 Pa.C.S. Ch. 63 (relating to
juvenile matters);

(B) the child is substantially at risk due to
parental abuse, neglect, drug or alcohol abuse or
incapacity; or

(C) the child has for a period of at least 12

1 consecutive months resided with the grandparent,
2 excluding brief temporary absences of the child from
3 the home, and is removed from the home by the
4 parents, in which case the action must be filed
5 within six months after the removal of the child from
6 the home.

7 § 5325. Standing for partial physical custody and supervised
8 physical custody.

9 In addition to situations set forth in section 5324 (relating
10 to standing for any form of physical custody or legal custody),
11 grandparents and great-grandparents may file an action under
12 this chapter for partial physical custody or supervised physical
13 custody in the following situations:

14 (1) where the parent of the child is deceased, a parent
15 or grandparent of the deceased parent may file an action
16 under this section;

17 (2) where the parents of the child have been separated
18 for a period of at least six months or have commenced and
19 continued a proceeding to dissolve their marriage; or

20 (3) when the child has, for a period of at least 12
21 consecutive months, resided with the grandparent or great-
22 grandparent, excluding brief temporary absences of the child
23 from the home, and is removed from the home by the parents,
24 an action must be filed within six months after the removal
25 of the child from the home.

26 § 5326. Effect of adoption.

27 Any rights to seek physical custody or legal custody rights
28 and any custody rights that have been granted under section 5324
29 (relating to standing for any form of physical custody or legal
30 custody) or 5325 (relating to standing for partial physical

1 custody and supervised physical custody) to a grandparent or
2 great-grandparent prior to the adoption of the child by an
3 individual other than a stepparent, grandparent or great-
4 grandparent shall be automatically terminated upon such
5 adoption.

6 § 5327. Presumption in cases concerning primary physical
7 custody.

8 (a) Between parents.--In any action regarding the custody of
9 the child between the parents of the child, there shall be no
10 presumption that custody should be awarded to a particular
11 parent.

12 (b) Between a parent and third party.--In any action
13 regarding the custody of the child between a parent of the child
14 and a nonparent, there shall be a presumption that custody shall
15 be awarded to the parent. The presumption in favor of the parent
16 may be rebutted by clear and convincing evidence.

17 (c) Between third parties.--In any action regarding the
18 custody of the child between a nonparent and another nonparent,
19 there shall be no presumption that custody should be awarded to
20 a particular party.

21 § 5328. Factors to consider when awarding custody.

22 (a) Factors.--In ordering any form of custody, the court
23 shall determine the best interest of the child by considering
24 all relevant factors, giving weighted consideration to those
25 factors which affect the safety of the child, including the
26 following:

27 (1) Which party is more likely to encourage and permit
28 frequent and continuing contact between the child and another
29 party.

30 (2) The present and past abuse committed by a party or

1 member of the party's household, whether there is a continued
2 risk of harm to the child or an abused party and which party
3 can better provide adequate physical safeguards and
4 supervision of the child.

5 (3) The parental duties performed by each party on
6 behalf of the child.

7 (4) The need for stability and continuity in the child's
8 education, family life and community life.

9 (5) The availability of extended family.

10 (6) The child's sibling relationships.

11 (7) The well-reasoned preference of the child, based on
12 the child's maturity and judgment.

13 (8) The attempts of a parent to turn the child against
14 the other parent, except in cases of domestic violence where
15 reasonable safety measures are necessary to protect the child
16 from harm.

17 (9) Which party is more likely to maintain a loving,
18 stable, consistent and nurturing relationship with the child
19 adequate for the child's emotional needs.

20 (10) Which party is more likely to attend to the daily
21 physical, emotional, developmental, educational and special
22 needs of the child.

23 (11) The proximity of the residences of the parties.

24 (12) Each party's availability to care for the child or
25 ability to make appropriate child-care arrangements.

26 (13) The level of conflict between the parties and the
27 willingness and ability of the parties to cooperate with one
28 another. A party's effort to protect a child from abuse by
29 another party is not evidence of unwillingness or inability
30 to cooperate with that party.

1 (14) The history of drug or alcohol abuse of a party or
2 member of a party's household.

3 (15) The mental and physical condition of a party or
4 member of a party's household.

5 (16) Any other relevant factor.

6 (b) Gender neutral.--~~The court shall be gender neutral in IN~~ ←
7 making a determination under subsection (a).~~No~~, NO party shall ←
8 receive preference based ~~solely~~ upon gender in any award granted ←
9 under this chapter.

10 (c) Grandparents and great-grandparents.--

11 (1) In ordering partial physical custody or supervised
12 physical custody to a party who has standing under section
13 5325(1) or (2) (relating to standing for partial physical
14 custody and supervised physical custody), the court shall
15 consider the following:

16 (i) the amount of personal contact between the child
17 and the party prior to the filing of the action;

18 (ii) whether the award interferes with any parent-
19 child relationship; and

20 (iii) whether the award is in the best interest of
21 the child.

22 (2) In ordering partial physical custody or supervised
23 physical custody to a parent's parent or grandparent who has
24 standing under section 5325(3), the court shall consider
25 whether the award:

26 (i) interferes with any parent-child relationship;
27 and

28 (ii) is in the best interest of the child.

29 § 5329. Consideration of criminal conviction.

30 (a) Offenses.--Where a party seeks any form of custody, the

1 court shall consider whether that party or member of that
2 party's household has been convicted of or has pleaded guilty or
3 no contest to any of the offenses in this section or an offense
4 in another jurisdiction substantially equivalent to any of the
5 offenses in this section. The court shall consider such conduct
6 and determine that the party does not pose a threat of harm to
7 the child before making any order of custody to that parent
8 when considering the following offenses:

9 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

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

11 18 Pa.C.S. § 2706 (relating to terroristic threats).

12 18 Pa.C.S. § 2709.1 (relating to stalking).

13 18 Pa.C.S. § 2901 (relating to kidnapping).

14 18 Pa.C.S. § 2902 (relating to unlawful restraint).

15 18 Pa.C.S. § 2903 (relating to false imprisonment).

16 18 Pa.C.S. § 2910 (relating to luring a child into a motor
17 vehicle or structure).

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

19 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

20 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
21 intercourse).

22 18 Pa.C.S. § 3124.1 (relating to sexual assault).

23 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

24 18 Pa.C.S. § 3126 (relating to indecent assault).

25 18 Pa.C.S. § 3127 (relating to indecent exposure).

26 18 Pa.C.S. § 3129 (relating to sexual intercourse with
27 animal).

28 18 Pa.C.S. § 3130 (relating to conduct relating to sex
29 offenders).

30 18 Pa.C.S. § 3301 (relating to arson and related offenses).

1 18 Pa.C.S. § 4302 (relating to incest).

2 18 Pa.C.S. § 4303 (relating to concealing death of child).

3 18 Pa.C.S. § 4304 (relating to endangering welfare of
4 children).

5 18 Pa.C.S. § 4305 (relating to dealing in infant children).

6 18 Pa.C.S. § 5902(b) (relating to prostitution and related
7 offenses).

8 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other
9 sexual materials and performances).

10 18 Pa.C.S. § 6301 (relating to corruption of minors).

11 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

12 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

13 18 Pa.C.S. § 6320 (relating to sexual exploitation of
14 children).

15 Section 6114 (relating to contempt for violation of order or
16 agreement).

17 The former 75 Pa.C.S. § 3731 (relating to driving under
18 influence of alcohol or controlled substance).

19 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol
20 or utilizing drugs).

21 Section 13(a)(1) of the act of April 14, 1972 (P.L.233,
22 No.64), known as The Controlled Substance, Drug, Device and
23 Cosmetic Act, to the extent that it prohibits the manufacture,
24 sale or delivery, holding, offering for sale or possession of
25 any controlled substance or other drug or device.

26 (b) Parent convicted of murder.--No court shall award
27 custody, partial custody or supervised physical custody to a
28 parent who has been convicted of murder under 18 Pa.C.S. §
29 2502(a) (relating to murder) of the other parent of the child
30 who is the subject of the order unless the child is of suitable

1 age and consents to the order.

2 (c) Initial evaluation.--The court shall provide for an
3 evaluation to determine whether:

4 (1) the party or household member who committed an
5 offense under subsection (a) poses a threat to the child; and

6 (2) counseling is necessary for that party or household
7 member.

8 (d) Counseling.--

9 (1) Where the court determines under subsection (c) that
10 counseling is necessary, it shall appoint a qualified
11 professional specializing in treatment relating to the
12 particular offense to provide counseling to the offending
13 individual.

14 (2) Counseling may include a program of treatment or
15 individual therapy designed to rehabilitate the offending
16 individual which addresses, but is not limited to, issues
17 regarding physical and sexual abuse, the psychology of the
18 offender and the effects of the offense on the victim.

19 (e) Subsequent evaluation.--

20 (1) At any time during or subsequent to the counseling
21 under subsection (d), the court may require another
22 evaluation to determine whether further counseling is
23 necessary.

24 (2) If the court awards custody to a party who committed
25 an offense under subsection (a) or who shares a household
26 with an individual who committed an offense under subsection
27 (a), the court may require subsequent evaluations on the
28 rehabilitation of the offending individual and the well-being
29 of the child subsequent to the order. If upon review of a
30 subsequent evaluation the court determines that the offending

individual poses a threat of physical, emotional or psychological harm to the child, the court may schedule a hearing to modify the custody order.

(f) Costs.--The court may order a party to pay all or part of the costs of the counseling and evaluations under this section.

§ 5330. Consideration of criminal charge.

(a) Expedited hearing.--A party who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) or otherwise about a charge filed against the other party for an offense listed under section 5329(a) (relating to consideration of criminal conviction) may move for a temporary custody order or modification of an existing custody order. The court shall hold the hearing under this subsection in an expeditious manner.

(b) Risk of harm.--In evaluating any request under subsection (a), the court shall consider whether the party who is or has been charged with an offense set forth in section 5329(a) poses a risk of physical, emotional or psychological harm to the child.

(c) No prejudice.--Failure to either apply for information under 42 Pa.C.S. § 1904 or act under this section shall not prejudice any party in a custody proceeding.

§ 5331. Parenting plan.

(a) Purpose.--In a contested custody proceeding, the court may require the parties to submit parenting plans for the care and custody of the child to aid the court in resolving the custody dispute. A parenting plan and the position of a party as set forth in that parenting plan shall not be admissible as evidence by another party.

1 (b) Contents.--A parenting plan shall include the following:

2 (1) The schedule for personal care and control of the
3 child, including parenting time, holidays and vacations.

4 (2) The education and religious involvement, if any, of
5 the child.

6 (3) The health care of the child.

7 (4) Child-care arrangements.

8 (5) Transportation arrangements.

9 (6) A procedure by which proposed changes, disputes and
10 alleged breaches of the custody order may be adjudicated or
11 otherwise resolved through mediation, arbitration or other
12 means.

13 (7) Any matter specified by the court.

14 (8) Any other matter that serves the best interest of
15 the child.

16 (c) Form.--If the court orders the parties to propose a
17 parenting plan, it shall be submitted to the court in
18 substantially the following form:

19 CAPTION

20 PARENTING PLAN

21 This parenting plan involves the following child/children:

22 Child's Name Age Where does this child live?

23 1.....

24 2.....

25 3.....

26 If you have children not addressed by this parenting plan, name
27 here:

28 Child's Name Age Where does this child live?

29 1.....

30 2.....

1 3.....

2 Legal Custody (who makes decisions about certain things):

3 Circle one

4 Diet..... Both parties decide together / Plaintiff /

5 Defendant

6 Religion..... Both parties decide together / Plaintiff /

7 Defendant

8 Medical Care... Both parties decide together / Plaintiff /

9 Defendant

10 Mental Health Care... Both parties decide together / Plaintiff /

11 Defendant

12 Discipline..... Both parents decide together / Plaintiff /

13 Defendant

14 Choice of School.... Both parents decide together / Plaintiff /

15 Defendant

16 Choice of Study..... Both parents decide together / Plaintiff /

17 Defendant

18 School Activities... Both parents decide together / Plaintiff /

19 Defendant

20 Sports Activities... Both parents decide together / Plaintiff /

21 Defendant

22 Additional items... Both parents decide together / Plaintiff /

23 Defendant

24 Explain what process you will use to make decisions?

25 (For example, the parent confronted with or anticipating the

26 choice will call the other parent when the choice presents

27 itself, and the other parent must agree or disagree within 24

28 hours of any deadline)

29

30

1 Physical Custody (where the child/children live)
2 The child's/children's residence is with.....
3 Describe which days and which times of the day the
4 child/children will be with each person:
5 Sunday Monday Tuesday Wednesday Thursday Friday Saturday
6
7 Describe where and when the child/children will be dropped off
8 and/or picked up (day and time of day)?
9 Drop-Off
10 Where.....
11 When.....
12
13 Pick-Up
14 Where
15 When
16
17 If one of you doesn't show up, how long will the other
18 wait?.....
19 If there are any extraordinary costs (taxi, train, airplane,
20 etc.), who will pay for which costs?
21
22
23 HOLIDAYS
24 Where will the child/children stay?
25

<u>HOLIDAY</u>	<u>YEAR A</u>	<u>YEAR B</u>	<u>EVERY YEAR</u>
<u>Martin Luther King Day</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
<u>President's Day</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
<u>Easter</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
<u>Memorial Day</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
<u>Fourth of July</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>

1	<u>Labor Day</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
2	<u>Yom Kippur</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
3	<u>Rosh Hashanah</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
4	<u>Thanksgiving</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
5	<u>Vacation after Thanksgiving</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
6	<u>Christmas Vacation</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
7	<u>Kwanzaa</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
8	<u>New Year's Eve/Day</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
9	<u>Spring Vacation</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
10	<u>Easter Sunday</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
11	<u>Child's Birthday</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
12	<u>Mother's Day</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
13	<u>Father's Day</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
14	<u>Other</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
15	<u>Other</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>
16	<u>Other</u>	<u>.....</u>	<u>.....</u>	<u>.....</u>

17 Summer Vacation Plans

18

19

20 Special Activities or School Activities

21 Will both of you attend?

22 Child's Name Activity If not, which of you will attend?

23

24

25

26 Temporary changes to this parenting schedule

27 From time to time, one of you might want or need to rearrange

28 the parenting time schedule due to work, family or other events.

29 You can attempt to agree on these changes. If you cannot agree,

30 the parent receiving the request will make the final decision.

1 The parent asking for the change will ask.....in
2 person.....by letter/mail.....by phone
3 No later than
412 hours..... 24 hours.... 1 week..... 1 month
5 The parent being asked for a change will reply
6 in person..... by letter/mail..... by phone
7 No later than
8 12 hours..... 24 hours..... 1 week..... 1 month
9 May parents contact one another?.....
10 When the child/children is/are with one of you, how may they
11 contact the other parent?.....
12
13 When and how maycontact the child?
14
15
16 In the event that proposed changes, disputes or alleged breaches
17 of this parenting plan and custody order are necessary or
18 desired, the parties agree that such changes will be addressed
19 by the following method (specify method of arbitration,
20 mediation, court action, etc.):
21
22
23 The following matter or matters as specified by the court:
24
25
26 Other (Anything else you want to agree on)
27
28
29
30 Date.....

Signature of Mother

Date.....

Signature of Father

Date.....

Signature of Witness

§ 5332. Informational programs.

(a) Attendance.--The court may direct the parties to attend informational programs concerning parental duties.

(b) Process not delayed.--Subsequent proceedings and the entry of any order or decree shall not be delayed because of the lack of participation in any informational program by one of the parties.

(c) Costs.--The court may order a party to pay all or part of the costs of the informational programs under this section.

§ 5333. Counseling as part of order.

(a) Attendance.--The court may, as part of a custody order, require the parties to attend counseling sessions.

(b) Abuse.--In situations involving abuse, the court may order individual counseling for the abuser but may not order the parties to attend joint counseling.

(c) Verification.--Each party's participation in the counseling sessions shall be verified by the counselor.

(d) Costs.--The court may order a party to pay all or part
of the costs of the counseling sessions under this section.

§ 5334. Guardian ad litem for child.

(a) Appointment.--The court may on its own motion or the motion of a party appoint a guardian ad litem to represent the child in the action. The court may assess the cost upon the parties or any of them or as otherwise provided by law. The guardian ad litem must be an attorney at law.

1 (b) Powers and duties.--The guardian ad litem shall be
2 charged with representation of the legal interests and the best
3 interests of the child during the proceedings and shall do all
4 of the following:

5 (1) ~~Meet~~ IF APPROPRIATE TO THE CHILD'S AGE AND MATURITY, ←
6 MEET with the child as soon as possible following the
7 appointment, and on a regular basis thereafter ~~in a manner~~ ←
8 ~~appropriate to the child's age and maturity.~~

9 (2) On a timely basis, be given access to relevant court
10 and county agency records, reports of examination of the
11 parents or other custodian of the child and medical,
12 psychological and school records.

13 (3) Participate in all proceedings.

14 (4) Conduct such further investigation necessary to
15 ascertain ~~the facts~~ RELEVANT FACTS FOR PRESENTATION TO THE ←
16 COURT.

17 (5) Interview potential witnesses, including the child's
18 parents, caretakers and foster parents, if any⁷. THE GUARDIAN ←
19 AD LITEM MAY examine and cross-examine witnesses and present
20 witnesses and evidence necessary to protect the best
21 interests of the child.

22 (6) Make specific recommendations to the court relating
23 to the best interests of the child, including any services
24 necessary to address the child's needs and safety.

25 (7) Explain the proceedings to the child to the extent
26 appropriate given the child's age, mental condition and
27 emotional condition.

28 (8) Advise the court of the child's wishes to the extent
29 that they can be ascertained and present to the court
30 whatever evidence exists to support the child's wishes. When

1 appropriate because of the age or mental and emotional
2 condition of the child, determine to the fullest extent
3 possible the wishes of the child and communicate this
4 information to the court. A difference between the child's
5 wishes under this paragraph and the recommendations under
6 paragraph (6) shall not be considered a conflict of interest
7 for the guardian ad litem.

8 (c) Abuse.--If substantial allegations of abuse of the child
9 are made, the court shall appoint a guardian ad litem for the
10 child if:

11 (1) counsel for the child is not appointed under section
12 5335 (relating to counsel for child); or

13 (2) the court is satisfied that the relevant information
14 will be presented to the court only with such appointment.

15 (d) Evidence subject to examination.--A guardian ad litem
16 may not testify except as authorized by Rule 3.7 of the Rules of
17 Professional Conduct, but may make legal argument based on
18 relevant evidence that shall be subject to examination by the
19 parties.

20 (e) Costs.--The court may order a party to pay all or part
21 of the costs of appointing a guardian ad litem under this
22 section.

23 § 5335. Counsel for child.

24 (a) Appointment.--The court may appoint counsel to represent
25 the child if the court determines that the appointment will
26 assist in resolving the issues in the custody proceeding. If a
27 child has legal counsel and a guardian ad litem, counsel shall
28 represent the legal interests of the child and the guardian ad
29 litem shall represent the best interests of the child.

30 (b) Abuse.--Substantial allegations of abuse of the child

1 constitute a reasonable basis for appointing counsel for the
2 child.

3 (c) Not subject to examination.--Counsel appointed by the
4 court for the child shall not be subject to examination unless
5 such counsel testifies in the matter.

6 (d) Costs.--The court may order a party to pay all or part
7 of the costs of appointing counsel for the child under this
8 section.

9 § 5336. Access to records and information.

10 (a) General rule.--Except as provided in subsections (b) and
11 (c):

12 (1) A party granted sole or shared legal custody under
13 section 5323 (relating to award of custody) shall be provided
14 access to:

15 (i) the medical, dental, religious and school
16 records of the child;

17 (ii) the address of the child and any other party;
18 and

19 (iii) any other information that the court deems
20 necessary or proper.

21 (2) Access to any records and information pertaining to
22 the child may not be denied solely based upon a parent's
23 physical custody schedule.

24 (3) Upon request, a parent, party or entity possessing
25 any information set forth in paragraph (1) shall provide it
26 to any party granted sole or shared legal custody.

27 (b) Nondisclosure of confidential information.--The court
28 shall not order the disclosure of any of the following
29 information to any parent or party granted custody:

30 (1) The address of a victim of abuse.

1 (2) Confidential information from an abuse counselor or
2 shelter.

3 (3) Information protected under Chapter 67 (relating to
4 domestic and sexual violence victim address confidentiality).

5 (4) Information independently protected from disclosure
6 by the child's right to confidentiality under the act of July
7 9, 1976 (P.L.817, No.143), known as the Mental Health
8 Procedures Act, or any other statute.

9 (c) Other information.--The court may determine not to
10 release information set forth in subsection (a), in which case
11 it shall state the reason for its denial on the record.

12 § 5337. Relocation.

13 (a) Applicability.--This section applies to any proposed
14 relocation.

15 (b) General rule.--No relocation shall occur unless:

16 (1) every individual who has custody rights to the child
17 consents to the proposed relocation; or

18 (2) the court approves the proposed relocation.

19 (c) Notice.--

20 (1) The party proposing the relocation shall notify
21 every other individual who has custody rights to the child.

22 (2) Notice, sent by certified mail, return receipt
23 requested, shall be given no later than:

24 (i) the 60th day before the date of the proposed
25 relocation; or

26 (ii) the tenth day after the date that the
27 individual knows of the relocation, if:

28 (A) the individual did not know and could not
29 reasonably have known of the relocation in sufficient
30 time to comply with the 60-day notice; and

1 (B) it is not reasonably possible to delay the
2 date of relocation so as to comply with the 60-day
3 notice.

4 (3) Except as provided by section 5336 (relating to
5 access to records and information), the following
6 information, if available, must be included with the notice
7 of the proposed relocation:

8 (i) The address of the intended new residence.

9 (ii) The mailing address, if not the same as the
10 address of the intended new residence.

11 (iii) Names and ages of the individuals in the new
12 residence, including individuals who intend to live in
13 the new residence.

14 (iv) The home telephone number of the intended new
15 residence, if available.

16 (v) The name of the new school district and school.

17 (vi) The date of the proposed relocation.

18 (vii) The reasons for the proposed relocation.

19 (viii) A proposal for a revised custody schedule.

20 (ix) Any other information which the party proposing
21 the relocation deems appropriate.

22 (x) A counter-affidavit as provided under subsection
23 (d)(1) which can be used to object to the proposed
24 relocation and the modification of a custody order.

25 (xi) A warning to the nonrelocating party that if
26 the nonrelocating party does not file with the court an
27 objection to the proposed relocation within 30 days after
28 receipt of the notice, that party shall be foreclosed
29 from objecting to the relocation.

30 (4) If any of the information set forth in paragraph (3)

1 is not known when the notice is sent but is later made known
2 to the party proposing the relocation, then that party shall
3 promptly inform every individual who received notice under
4 this subsection.

5 (d) Objection to proposed relocation.--

6 (1) A party entitled to receive notice may file with the
7 court an objection to the proposed relocation and seek a
8 temporary or permanent order to prevent the relocation. The
9 nonrelocating party shall have the opportunity to indicate
10 whether he ~~or she~~ objects to relocation or not, and whether ←
11 he ~~or she~~ objects to modification of the custody order or ←
12 not. If the party objects to either relocation or
13 modification of the custody order, a hearing shall be held as
14 provided in subsection ~~(g)~~ (G) (1). The objection shall be ←
15 made by completing and returning to the court a counter-
16 affidavit, which shall be verified subject to penalties under
17 18 Pa.C.S. § 4904 (relating to unsworn falsification to
18 authorities), in substantially the following form:

19 COUNTER-AFFIDAVIT REGARDING RELOCATION

20 This proposal of relocation involves the following
21 child/children:

22 <u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
23 <u>.....</u>	<u>.....</u>	<u>.....</u>
24 <u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
25 <u>.....</u>	<u>.....</u>	<u>.....</u>
26 <u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
27 <u>.....</u>	<u>.....</u>	<u>.....</u>

28 I have received a notice of proposed relocation and
29 1. I do not object to the relocation and I do not object
30 to the modification of the custody order consistent with the

1 proposal for revised custody schedule as attached to the notice.
2 2. I do not object to the relocation, but I do object to
3 modification of the custody order, and I request that a hearing
4 be scheduled:

5 a. Prior to allowing (name of child/children) to
6 relocate.

7 b. After the child/children relocate.

8 3. I do object to the relocation and I do object to the
9 modification of the custody order, and I further request that a
10 hearing be held on both matters prior to the relocation taking
11 place.

12
13 I understand that in addition to checking (2) or (3) above, I
14 must also file this notice with the court in writing and serve
15 it on the other party by certified mail, return receipt
16 requested. If I fail to do so within 30 days of my receipt of
17 the proposed relocation notice, I shall be foreclosed from
18 objecting to the relocation.

19
20 I verify that the statements made in this counter-affidavit are
21 true and correct. I understand that false statements herein are
22 made subject to the penalties of 18 Pa.C.S. § 4904 (relating to
23 unsworn falsification to authorities).

24 Date:

25
26

27 (2) An objection made under this subsection shall be
28 filed with the court within 30 days of receipt of the
29 proposed relocation notice, and served on the other party by
30 certified mail, return receipt requested.

1 (3) If notice of the proposed relocation has been
2 properly given and no objection to the proposed relocation
3 has been filed in court, then it shall be presumed that the
4 nonrelocating party has consented to the proposed relocation.

5 (4) If a party who has been given proper notice does not
6 file with the court an objection to the relocation within 30
7 days after receipt of the notice but later petitions the
8 court for review of the custodial arrangements, the court
9 shall not accept testimony challenging the relocation.

10 (e) Confirmation of relocation.--If no objection to the
11 proposed relocation is filed under subsection (d), the party
12 proposing the relocation shall file the following with the court
13 prior to the relocation:

14 (1) an affidavit stating that the party provided notice
15 to every individual entitled to notice, the time to file an
16 objection to the proposed relocation has passed and no
17 individual entitled to receive notice has filed an objection
18 to the proposed relocation;

19 (2) Proof that proper notice was given in the form of a
20 return receipt with the signature of the addressee and the
21 full notice that was sent to the addressee.

22 (3) a petition to confirm the relocation and modify any
23 existing custody order; and

24 (4) a proposed order containing the information set
25 forth in subsection (c) (3).

26 (f) Modification of custody order.--If a counter-affidavit
27 regarding relocation is filed with the court which indicates the
28 nonrelocating party both has no objection to the proposed
29 relocation and no objection to the modification of the custody
30 order consistent with the proposal for revised custody schedule,

1 the court may modify the existing custody order by approving the
2 proposal for revised custody schedule submitted under section
3 5337(c)(viii), and shall specify the method by which its future
4 modification can be made if desired by either party. If a
5 counter-affidavit regarding relocation is filed with the court
6 which indicates the nonrelocating party objects either to the
7 proposed relocation or to the modification of the custody order
8 consistent with the proposal for revised custody schedule, the
9 court shall modify the existing custody order only after holding
10 a hearing to establish the terms and conditions of the order
11 pursuant to the relocation indicating the rights, if any, of the
12 nonrelocating parties. The court shall determine whether such ←
13 hearing should occur expeditiously prior to the relocation of
14 the child or children, or whether it can be held at a date
15 following relocation.

16 (g) Hearing.--

17 (1) ~~The~~ EXCEPT AS SET FORTH IN PARAGRAPH (3), THE court ←
18 shall hold an expedited full hearing on the proposed
19 relocation after a timely objection has been filed and before
20 the relocation occurs unless exigent circumstances exist, in ←
21 which case the relocation may occur pending an expedited full
22 hearing.

23 (2) EXCEPT AS SET FORTH IN PARAGRAPH (3), THE COURT MAY, ←
24 ON ITS OWN MOTION, HOLD AN EXPEDITED FULL HEARING ON THE
25 PROPOSED RELOCATION BEFORE THE RELOCATION OCCURS.

26 (3) NOTWITHSTANDING PARAGRAPHS (1) AND (2), IF THE COURT
27 FINDS THAT EXIGENT CIRCUMSTANCES EXIST, THE COURT MAY APPROVE
28 THE RELOCATION PENDING AN EXPEDITED FULL HEARING.

29 ~~(2)~~ (4) If the court approves the proposed relocation, ←
30 it shall:

1 (i) modify any existing custody order; or

2 (ii) establish the terms and conditions of a custody
3 order.

4 (h) Relocation factors.--In determining whether to grant a
5 proposed relocation, the court shall consider the following
6 factors, giving weighted consideration to those factors which
7 affect the safety of the child:

8 (1) The nature, quality, extent of involvement and
9 duration of the child's relationship with the party proposing
10 to relocate and with the nonrelocating party, siblings and
11 other significant persons in the child's life.

12 (2) The age, developmental stage, needs of the child and
13 the likely impact the relocation will have on the child's
14 physical, educational and emotional development, taking into
15 consideration any special needs of the child.

16 (3) The feasibility of preserving the relationship
17 between the nonrelocating party and the child through
18 suitable custody arrangements, considering the logistics and
19 financial circumstances of the parties.

20 (4) The child's preference, taking into consideration
21 the age and maturity of the child.

22 (5) Whether there is an established pattern of conduct
23 of either party to promote or thwart the relationship of the
24 child and the other party.

25 (6) Whether the relocation will enhance the general
26 quality of life for the party seeking the relocation,
27 including, but not limited to, financial or emotional benefit
28 or educational opportunity.

29 (7) Whether the relocation will enhance the general
30 quality of life for the child, including, but not limited to,

1 financial or emotional benefit or educational opportunity.

2 (8) The reasons and motivation of each party for seeking
3 or opposing the relocation.

4 (9) The present and past abuse committed by a party or
5 member of the party's household and whether there is a
6 continued risk of harm to the child or an abused party.

7 (10) Any other factor affecting the best interest of the
8 child.

9 (i) Burden of proof.--

10 (1) The party proposing the relocation has the burden of
11 establishing that the relocation will serve the best interest
12 of the child as shown under the factors set forth in
13 subsection ~~(g)~~ (H).

14 (2) Each party has the burden of establishing the
15 integrity of that party's motives in either seeking the
16 relocation or seeking to prevent the relocation.

17 (j) Failure to provide reasonable notice.--The court may
18 consider a failure to provide reasonable notice of a proposed
19 relocation as:

20 (1) a factor in making a determination regarding the
21 relocation;

22 (2) a factor in determining whether custody rights
23 should be modified;

24 (3) a basis for ordering the return of the child to the
25 nonrelocating party if the relocation has occurred without
26 reasonable notice;

27 (4) sufficient cause to order the party proposing the
28 relocation to pay reasonable expenses and counsel fees
29 incurred by the party objecting to the relocation; and

30 (5) a ground for contempt and the imposition of



1 sanctions against the party proposing the relocation.

2 (k) Mitigation.--Any consideration of a failure to provide
3 reasonable notice under subsection (i) shall be subject to
4 mitigation if the court determines that such failure was caused
5 in whole, or in part, by abuse.

6 (l) Effect of relocation prior to hearing.--If a party
7 relocates with the child prior to a full expedited hearing, the
8 court shall not confer any presumption in favor of the
9 relocation.

10 § 5338. Modification of existing order.

11 (a) Best interest of the child.--Upon petition, a court may
12 modify a custody order to serve the best interest of the child.

13 (b) Applicability.--This section shall apply to any custody
14 order entered by a court of this Commonwealth or any other state
15 subject to the jurisdictional requirements set forth in Chapter
16 54 (relating to uniform child custody jurisdiction and
17 enforcement).

18 § 5339. Award of counsel fees, costs and expenses.

19 Under this chapter, a court may award reasonable interim or
20 final counsel fees, costs and expenses to a party if the court
21 finds that the conduct of another party was obdurate, vexatious,
22 repetitive or in bad faith.

23 § 5340. Court-appointed child custody health care or behavioral
24 health practitioners.

25 No party to a child custody matter in which the court has
26 appointed a licensed health care or behavioral health
27 practitioner to assist the court by conducting an examination or
28 evaluation of the parties involved or making a recommendation
29 concerning a child custody agreement or order may be permitted
30 to file a complaint against the practitioner with the

1 practitioner's State licensing board prior to the final
2 agreement or order being issued and for 60 days thereafter. As
3 used in this section, "licensed health care or behavioral health
4 practitioner" means a person who is licensed, certified,
5 accredited or otherwise regulated by the Commonwealth to provide
6 health care or behavioral health services.

7 Section 3. Section 1904(b), (c) and (h) of Title 42 are
8 amended to read:

9 § 1904. Availability of criminal charge information in child
10 custody proceedings.

11 * * *

12 (b) Criminal charges enumerated.--The criminal charge
13 information that shall be available on the information system
14 shall be limited to the offenses listed in 23 Pa.C.S. §
15 [5303(b.1)(2) (relating to award of custody, partial custody or
16 visitation)] 5329(a) (relating to consideration of criminal
17 conviction).

18 (c) Application for access to criminal charge information.--
19 To obtain information about charges covered in 23 Pa.C.S. §
20 [5303(b.1)(2)] 5329(a), a parent who has been awarded custody[,]
21 or partial custody [or visitation] or who is a party to a
22 custody proceeding must file an application for access to the
23 information with the office of the prothonotary in the county
24 where the proceeding or order was filed.

25 (1) A person who knowingly gives false information with
26 the intent to gain information provided for under this
27 section commits an offense under 18 Pa.C.S. § 4904(a)
28 (relating to unsworn falsification to authorities).

29 (2) The application must be filed with the prothonotary
30 by one of the following methods:

1 (i) In person, at the office of the prothonotary, by
2 the parent who is filing the application. The applicant
3 must have a valid form of photoidentification available
4 for the inspection of the prothonotary.

5 (ii) By mailing a notarized application using first
6 class mail.

7 (iii) By including the application with the original
8 complaint, initial response or any other pleading or
9 motion filed with the prothonotary.

10 (3) The Administrative Office shall develop the
11 application for access to the criminal charge information
12 system. The following information shall be included in the
13 application:

14 (i) Docket number of original court filing.

15 (ii) Date of filing.

16 (iii) Date of birth of all children involved in the
17 custody proceeding or order.

18 (iv) A personal access code.

19 (v) A notice to the parent that additional
20 information relating to criminal history record
21 information is available, as provided for in 18 Pa.C.S.
22 Ch. 91 (relating to criminal history record information).

23 (vi) A statement verifying that:

24 (A) the person who is filing for access to the
25 criminal charge information system is the actual
26 person listed on the application;

27 (B) to the best of the applicant's knowledge and
28 belief, all the information included in the
29 application is true and correct; and

30 (C) the applicant is a party to the custody

1 proceeding or order that is listed on the
2 application.

3 (vii) A warning as to the penalty under 18 Pa.C.S. §
4 4904.

5 (viii) Any additional information that it is
6 determined to be necessary to expedite the verification
7 of the application and to provide access to the system,
8 as determined by the Administrative Office.

9 (4) Applications shall be made available through county
10 prothonotaries.

11 * * *

12 (h) Information available to parent.--

13 (1) After applying and qualifying to obtain the criminal
14 charge information provided by the system, a parent may
15 request information by telephone as to whether the other
16 parent has been charged with any offense listed in 23 Pa.C.S.
17 § [5303(b.1)(2)] 5329(a).

18 (2) The parent shall also be entitled to criminal
19 history record information as provided for in 18 Pa.C.S. Ch.
20 91, and the parent shall be informed of the availability.

21 (3) Criminal charge information shall be retained on the
22 system for the period of time as provided for the retention
23 of criminal charges and records under 18 Pa.C.S. Ch. 91 and
24 then only until the youngest child involved in the custody
25 proceeding or order reaches 18 years of age. At no time shall
26 information be retained on the system beyond what is
27 permitted under 18 Pa.C.S. Ch. 91.

28 * * *

29 Section 4. A proceeding under the former provisions of 23
30 Pa.C.S. Ch. 53 which was commenced before the effective date of

1 this section shall be governed by the law in effect at the time
2 the proceeding was initiated.

3 Section 5. This act shall take effect in 60 days.