
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2058 Session of
2018

INTRODUCED BY ROZZI, KINSEY, DEAN, HAGGERTY, READSHAW,
SCHLOSSBERG, TOOHIL, DAVIS, YOUNGBLOOD, CALTAGIRONE AND
KIRKLAND, FEBRUARY 5, 2018

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 5, 2018

AN ACT

1 Amending Titles 23 (Domestic Relations) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in child custody, further providing for factors to
4 consider when awarding custody, for guardian ad litem for
5 child and for counsel for child; in Administrative Office of
6 Pennsylvania Courts, providing for child abuse and domestic
7 violence education and training program for judges and
8 guardians ad litem; and, in depositions and witnesses,
9 further providing for rights and services.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 5328(a) of Title 23 of the Pennsylvania
13 Consolidated Statutes is amended to read:

14 § 5328. Factors to consider when awarding custody.

15 (a) Factors.--In ordering any form of custody, the court
16 shall determine the best interest of the child by considering
17 all relevant factors, giving weighted consideration to those
18 factors which affect the health and safety of the child,
19 including the following:

20 (1) Which party is more likely to ensure the health and
21 safety of the child. There shall be a rebuttable presumption

1 that custody or visitation shall not be awarded to a parent
2 or party who jeopardizes the health and safety of the child.

3 [(1)] (1.1) Which party is more likely to encourage and
4 permit frequent and continuing contact between the child and
5 another party[.], except in cases of domestic violence,
6 including child abuse, where reasonable safety measures are
7 necessary to protect the child from harm.

8 (2) The present and past abuse committed by a party or
9 member of the party's household, whether there is a continued
10 risk of harm to the child or an abused party and which party
11 can better provide adequate physical safeguards and
12 supervision of the child.

13 (2.1) The information set forth in section 5329.1(a)
14 (relating to consideration of child abuse and involvement
15 with protective services).

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

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

20 (5) The availability of extended family.

21 (6) The child's sibling relationships.

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

24 (8) The attempts of a parent to turn the child against
25 the other parent, except in cases of domestic violence,
26 including child abuse, where reasonable safety measures are
27 necessary to protect the child from harm.

28 (9) Which party is more likely to maintain a loving,
29 [stable,] consistent and nurturing relationship with the
30 child adequate for the child's emotional needs.

1 (10) Which party is more likely to attend to the daily
2 physical, emotional, developmental, educational and special
3 needs of the child.

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

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

7 (13) The level of conflict between the parties and the
8 willingness and ability of the parties to cooperate with one
9 another. A party's effort to protect a child from abuse by
10 another party is not evidence of unwillingness or inability
11 to cooperate with that party.

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

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

16 (15.1) Allegations of child abuse or a history of
17 domestic violence in the presence of the child. The following
18 apply:

19 (i) An evidentiary hearing limited to evidence
20 related to the issue of child abuse or domestic violence
21 shall be held if consideration is given under this
22 paragraph.

23 (ii) A child's disclosure of abuse or a parent's
24 allegation of child abuse or domestic violence, if made
25 in good faith, shall not be a factor that weighs against
26 the safe parent in determining custody or visitation.

27 (iii) If the court finds a pattern of domestic
28 violence or an act of severe child abuse, including
29 sexual abuse and trauma, by a parent, the court shall
30 award sole custody of the child to the safe parent or

1 party and shall suspend visitation or only award
2 professionally supervised visitation to the parent
3 engaged in a pattern of violence or abusive behavior. Any
4 cost incurred for professionally supervised visitation
5 shall be paid by the abusing parent.

6 (16) Any other relevant factor.

7 * * *

8 Section 2. Sections 5334(c) and 5335(b) of Title 23 are
9 amended to read:

10 § 5334. Guardian ad litem for child.

11 * * *

12 (c) Abuse.--If substantial allegations of abuse of the child
13 or substantial allegations of domestic violence which impacts
14 the child are made, the court shall appoint a guardian ad litem
15 for the child if:

16 (1) counsel for the child is not appointed under section
17 5335 (relating to counsel for child); or

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

20 * * *

21 § 5335. Counsel for child.

22 * * *

23 (b) Abuse.--Substantial allegations of abuse of the child
24 and substantial allegations of domestic violence which impacts
25 the child constitute a reasonable basis for appointing counsel
26 for the child.

27 * * *

28 Section 3. Title 42 is amended by adding a section to read:

29 § 1908. Child abuse and domestic violence education and
30 training program for judges and guardians ad litem.

1 The Administrative Office of Pennsylvania Courts may develop
2 and implement ongoing education and training programs for
3 judges, including magisterial district judges and relevant
4 personnel, regarding child abuse, including child sexual abuse
5 and trauma, and domestic violence and the impact of child abuse
6 and domestic violence on children. The education and training
7 program shall be offered at intervals of no more than every
8 three years and shall include the latest best practices and only
9 evidence-based research from accredited institutions in child
10 abuse, including child sexual abuse and trauma, and domestic
11 violence designed to improve the ability of the court to
12 recognize and respond to the impact of child abuse and domestic
13 violence on all victims, specifically children. The education
14 and training program shall only utilize scientific theories that
15 meet admissibility standards in child abuse, including child
16 sexual abuse and trauma, and domestic abuse.

17 Section 4. Section 5983(a) of Title 42 is amended to read:
18 § 5983. Rights and services.

19 (a) Designation of persons to act on behalf of children.--
20 Courts of common pleas may designate one or more persons as a
21 child advocate to provide the following services on behalf of
22 children who are involved in criminal proceedings as victims or
23 material witnesses or children who are the subject of a custody
24 agreement or dispute and who are alleged to have been abused or
25 have been impacted by domestic violence:

26 (1) To explain, in language understood by the child, all
27 legal proceedings in which the child will be involved.

28 (2) As a friend of the court, to advise the judge,
29 whenever appropriate, of the child's ability to understand
30 and cooperate with any court proceedings.

1 (3) To assist or secure assistance for the child and the
2 child's family in coping with the emotional impact of the
3 crime and subsequent criminal proceedings in which the child
4 is involved.

5 * * *

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