
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1397 Session of
2019

INTRODUCED BY HELM, KAUFFMAN, TOOHL, ROTHMAN, RYAN, PICKETT,
KORTZ, KAUFER, SIMMONS, EVERETT, MILLARD, JONES, BOBACK,
KINSEY AND MOUL, MAY 6, 2019

REFERRED TO COMMITTEE ON JUDICIARY, MAY 6, 2019

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child custody, further providing
3 for definitions, for award of custody, for standing for
4 partial physical custody and supervised physical custody, for
5 effect of adoption, for presumption in cases concerning
6 primary physical custody, for factors to consider when
7 awarding custody, for consideration of criminal conviction,
8 for consideration of child abuse and involvement with
9 protective services and for parenting plan.

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

12 Section 1. Section 5322 of Title 23 of the Pennsylvania
13 Consolidated Statutes is amended to read:

14 § 5322. Definitions.

15 (a) This chapter.--The following words and phrases when used
16 in this chapter shall have the meanings given to them in this
17 subsection unless the context clearly indicates otherwise:

18 "Abuse." As defined in section 6102 (relating to
19 definitions).

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

21 "Agency." Any organization, society, institution, court

1 facility or other entity which provides for the care of a child.
2 The term does not include a county children and youth social
3 service agency.

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

5 "Equal parenting time." As close as practicable to 50% of
6 time spent with each parent, but in no case exceeding 60% of
7 time spent with either parent.

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.] shared or limited
11 physical custody, including supervised physical custody.

12 Section 2. Sections 5323(a)(2) and (3), (b) and (d), 5325
13 heading and introductory paragraph, 5326, 5327 heading and (a),
14 5328(a) and (c), 5329(b), 5329.1(b)(1) and (2) and 5331(c) of
15 Title 23 are amended to read:

16 § 5323. Award of custody.

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

21 * * *

22 [(2) Primary physical custody.

23 (3) Partial physical custody.]

24 * * *

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

1 in custody matters. Presumptions as to the best interest of the
2 child shall be as provided under section 5327 (relating to
3 presumption).

4 * * *

5 (d) Reasons for award.--The court shall delineate the
6 reasons for its decision [on the record in open court or] in an
7 award of custody, including an interim award, in a written
8 opinion or order. The opinion or order shall include, with
9 specificity, the reasons for any deviation from equal parenting
10 time.

11 * * *

12 § 5325. [Standing] Grandparent standing for [partial] shared
13 physical custody and supervised physical custody.

14 In addition to situations set forth in section 5324 (relating
15 to standing for any form of physical custody or legal custody),
16 grandparents and great-grandparents may file an action under
17 this chapter for [partial] shared physical custody or supervised
18 physical custody in the following situations:

19 * * *

20 § 5326. Effect of adoption.

21 Any rights to seek physical custody or legal custody rights
22 and any custody rights that have been granted under section 5324
23 (relating to standing for any form of physical custody or legal
24 custody) or 5325 (relating to grandparent standing for [partial]
25 shared physical custody and supervised physical custody) to a
26 grandparent or great-grandparent prior to the adoption of the
27 child by an individual other than a stepparent, grandparent or
28 great-grandparent shall be automatically terminated upon such
29 adoption.

30 § 5327. [Presumption in cases concerning primary physical

1 custody.] Presumptions.

2 (a) Between parents.--In any action regarding the custody of
3 the child between the parents of the child, there shall be [no
4 presumption that custody should be awarded to a particular
5 parent.] a presumption, rebuttable by clear and convincing
6 evidence, that shared physical and legal custody and equal
7 parenting time is in the best interest of the child. If a
8 deviation from equal parenting time is warranted, the court
9 shall order a parenting time schedule that maximizes the time
10 each parent has with the child, to the extent consistent with
11 the child's best interest.

12 * * *

13 § 5328. Factors to consider when awarding custody.

14 (a) Factors.--In ordering any form of custody, the court
15 shall determine the best interest of the child by considering
16 all relevant factors, giving weighted consideration to those
17 factors which affect the safety of the child, including, but not
18 limited to, the following:

19 (1) [Which party is more likely to] The likelihood that
20 a party will encourage and permit frequent and continuing
21 contact between the child and another party.

22 (2) [The present and] Present or past abuse committed by
23 a party or member of the party's household, whether there is
24 a continued risk of harm to the child or an abused party and
25 [which party can better] the ability of each party to provide
26 adequate physical safeguards and supervision of the child.

27 (2.1) The information set forth in section 5329.1(a)
28 (relating to consideration of child abuse and involvement
29 with protective services).

30 (3) The interest each party has shown in the child,

1 including parental duties performed [by each party] on behalf
2 of the child.

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

5 (5) The availability of extended family.

6 (6) The child's sibling relationships.

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

9 (8) [The] Any attempts of a parent to turn the child
10 against the other parent, except in cases of domestic
11 violence where reasonable safety measures are necessary to
12 protect the child from harm.

13 (9) [Which party is more likely] The desire and ability
14 of each party to maintain a loving, stable, consistent and
15 nurturing relationship with the child adequate for the
16 child's emotional needs.

17 (10) [Which party is more likely] The likelihood of each
18 party to attend to the daily physical, emotional,
19 developmental, educational and special needs of the child.

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

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

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

28 (14) [The] Any history of drug or alcohol abuse of a
29 party or member of a party's household.

30 (15) The mental and physical condition of a party or

1 member of a party's household.

2 (16) [Any other relevant factor.] The existence of a
3 prior custody or parenting plan that granted unequal
4 parenting time for reasons not related to the fitness or
5 interest of either parent.

6 * * *

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

8 (1) In ordering [partial] shared physical custody or
9 supervised physical custody to a party who has standing under
10 section 5325(1) or (2) (relating to grandparent standing for
11 [partial] shared physical custody and supervised physical
12 custody), the court shall consider the following:

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

15 (ii) whether the award interferes with any parent-
16 child relationship; and

17 (iii) whether the award is in the best interest of
18 the child.

19 (2) In ordering [partial] shared physical custody or
20 supervised physical custody to a parent's parent or
21 grandparent who has standing under section 5325(3), the court
22 shall consider whether the award:

23 (i) interferes with any parent-child relationship;
24 and

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

26 § 5329. Consideration of criminal conviction.

27 * * *

28 (b) Parent convicted of murder.--No court shall award
29 [custody, partial custody or supervised physical] custody to a
30 parent who has been convicted of murder under 18 Pa.C.S. §

1 2502(a) (relating to murder) of the other parent of the child
2 who is the subject of the order unless the child is of suitable
3 age and consents to the order.

4 * * *

5 § 5329.1. Consideration of child abuse and involvement with
6 protective services.

7 * * *

8 (b) Cooperation.--The following apply:

9 (1) The Department of [Public Welfare] Human Services
10 and the county children and youth social service agency shall
11 fully cooperate with the court and assist the court in
12 fulfilling its duties under this section.

13 (2) The Department of [Public Welfare] Human Services
14 and the county children and youth social service agency shall
15 fully cooperate with the governing authority in order to
16 implement the provisions of this section.

17 * * *

18 § 5331. Parenting plan.

19 * * *

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

23 CAPTION

24 PARENTING PLAN

25 This parenting plan involves the following child/children:

26	Child's Name	Age	Where does this child live?
27	1.....
28	2.....
29	3.....

30 If you have children not addressed by this parenting plan, name

1 here:

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

3 1.....

4 2.....

5 3.....

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

7 Circle one

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

9 Defendant

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

11 Defendant

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

13 Defendant

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

15 Defendant

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

17 Defendant

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

19 Defendant

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

21 Defendant

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

23 Defendant

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

25 Defendant

26 Additional Items... Both parents decide together / Plaintiff /

27 Defendant

28 Explain what process you will use to make decisions?

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

30 choice will call the other parent when the choice presents

1 itself, and the other parent must agree or disagree within 24
2 hours of any deadline)

3
4

5 Physical Custody (where the child/children live)

6 The child's/children's residence [is with] will be presumed to
7 be at the home of both parents. If the parties have agreed
8 otherwise, please state where the child/children
9 reside.....

10 Describe which days and which times of the day the
11 child/children will be with each person:

12 Sunday Monday Tuesday Wednesday Thursday Friday Saturday
13

14 Describe where and when the child/children will be dropped off
15 and/or picked up (day and time of day)?

16 Drop-Off

17 Where.....

18 When.....

19

20 Pick-Up

21 Where

22 When

23

24 If one of you doesn't show up, how long will the other
25 wait?.....

26 If there are any extraordinary costs (taxi, train, airplane,
27 etc.), who will pay for which costs?

28

29

30 HOLIDAYS

1 Where will the child/children stay?

2 HOLIDAY YEAR A YEAR B EVERY YEAR

3 Martin Luther King Day

4 President's Day

5 Easter

6 Memorial Day

7 Fourth of July

8 Labor Day

9 Yom Kippur

10 Rosh Hashanah

11 Thanksgiving

12 Vacation after Thanksgiving

13 Christmas Vacation

14 Kwanzaa

15 New Year's Eve/Day

16 Spring Vacation

17 Easter Sunday

18 Child's Birthday

19 Mother's Day

20 Father's Day

21 Other

22 Other

23 Other

24 Summer Vacation Plans

25

26

27 Special Activities or School Activities

28 Will both of you attend?

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

30

1
2
3 Temporary changes to this parenting schedule
4 From time to time, one of you might want or need to rearrange
5 the parenting time schedule due to work, family or other events.
6 You can attempt to agree on these changes. If you cannot agree,
7 the parent receiving the request will make the final decision.
8 The parent asking for the change will ask.....in
9 person.....by letter/mail.....by phone
10 No later than
1112 hours..... 24 hours.... 1 week..... 1 month
12 The parent being asked for a change will reply
13 in person..... by letter/mail..... by phone
14 No later than
15 12 hours..... 24 hours..... 1 week..... 1 month
16 May parents contact one another?.....
17 When the child/children is/are with one of you, how may they
18 contact the other parent?.....
19
20 When and how maycontact the child?
21
22
23 In the event that proposed changes, disputes or alleged breaches
24 of this parenting plan and custody order are necessary or
25 desired, the parties agree that such changes will be addressed
26 by the following method (specify method of arbitration,
27 mediation, court action, etc.):
28
29
30 The following matter or matters as specified by the court:

1

2

3 Other (Anything else you want to agree on):

4

5

6

7 Date.....

Signature of Mother

9 Date.....

Signature of Father

11 Date.....

Signature of Witness

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