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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1587 Session of  
2019

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INTRODUCED BY T. DAVIS, TOOHL, ROZZI, WARREN, HILL-EVANS,  
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THOMAS, BERNSTINE, HENNESSEY, KOSIEROWSKI, ULLMAN, ISAACSON,  
HOWARD AND GALLOWAY, OCTOBER 15, 2019

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REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 15, 2019

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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  
4 definitions, for award of custody, for factors to consider  
5 when awarding custody, for consideration of criminal  
6 conviction, for guardian ad litem for child, for counsel for  
7 child and for award of counsel fees, costs and expenses; in  
8 Administrative Office of Pennsylvania Courts, providing for  
9 child abuse and domestic violence education and training  
10 program for judges and court personnel; and, in depositions  
11 and witnesses, further providing for rights and services.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 Section 1. The General Assembly finds and declares as  
15 follows:

16 (1) The Commonwealth has a duty to protect all children  
17 in this Commonwealth and all three branches of the State  
18 government play important roles in fulfilling that duty.

19 (2) Domestic violence is a pattern of coercive and  
20 controlling tactics by one partner against another in an

1 intimate partner relationship designed to maintain control  
2 over the partner and make the major decisions in the  
3 relationship.

4 (3) Although abusers often use physical violence as one  
5 of the tactics to commit domestic violence, not all abusers  
6 engage in physical violence and most tactics are not physical  
7 or illegal.

8 (4) Common tactics used to commit domestic violence  
9 include verbal, emotional, psychological and economic abuse,  
10 isolation, threats, including threats to seek custody if the  
11 victim leaves, controlling behaviors, monitoring, litigation  
12 abuse and demands for custody or joint custody to pressure  
13 the partner to return or punish the partner for leaving.

14 (5) The health and safety of all children in this  
15 Commonwealth must be the first priority in all decisions  
16 concerning child custody.

17 (6) In child custody proceedings in which there are  
18 allegations of domestic violence, expertise in domestic  
19 violence is required to determine if the allegations are  
20 valid.

21 (7) It is the intent of the General Assembly to:

22 (i) Ensure that in all cases and controversies  
23 before the courts involving questions of child custody,  
24 the health, safety and welfare of the child are protected  
25 and regarded as issues of paramount importance.

26 (ii) Rectify common past practices in this  
27 Commonwealth that have been shown to work poorly for  
28 children.

29 (iii) Encourage custody court professionals to  
30 utilize current and valid scientific research in making

1 decisions regarding child custody.

2 Section 2. The definition of "abuse" in section 5322(a) of  
3 Title 23 of the Pennsylvania Consolidated Statutes is amended  
4 and the subsection is amended by adding definitions to read:  
5 § 5322. Definitions.

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

9 "Abuse." As follows:

10 (1) As defined in section 6102 (relating to definitions)  
11 [.] and the term includes the following:

12 (i) The crime of harassment pursuant to 18 Pa.C.S. §  
13 2709 (relating to harassment).

14 (ii) The crime of stalking pursuant to 18 Pa.C.S. §  
15 2709.1 (relating to stalking).

16 (2) The term does not include the justified use of force  
17 in self-protection or for the protection of other persons in  
18 accordance with 18 Pa.C.S. Ch. 5 (relating to general  
19 principles of justification) by a party in response to abuse  
20 or domestic violence by the other party.

21 \* \* \*

22 "Health and safety of the child." The term includes, but is  
23 not limited to, the physical, emotional and psychological  
24 health, safety and well-being of the child.

25 \* \* \*

26 "Therapeutic setting." Any setting where a licensed  
27 therapist, counselor, social worker or other appropriate  
28 professional guides or monitors the interaction between the  
29 party and child and ensures the health and safety of the child.

30 \* \* \*

1 Section 3. Section 5323(e) of Title 23 is amended to read:

2 § 5323. Award of custody.

3 \* \* \*

4 (e) Safety conditions.--After considering the factors under  
5 section [5328(a)(2)] 5328, if the court finds that there is an  
6 ongoing risk of harm to the child or an abused party and awards  
7 any form of custody to a party who committed the abuse or who  
8 has a household member who committed the abuse, the court shall  
9 include in the custody order safety conditions [designed],  
10 restrictions or safeguards necessary to protect the child or the  
11 abused party[.] and to minimize any risk of harm to the child.  
12 The safety conditions, restrictions or safeguards may include a  
13 supervised physical custody arrangement imposed on a parent by  
14 the court. If the court orders a supervised physical custody  
15 arrangement, the supervised physical custody arrangement shall  
16 be conducted by a court-approved professional in a therapeutic  
17 setting and under conditions that ensure the health and safety  
18 of the child.

19 \* \* \*

20 Section 4. Section 5328(a) of Title 23 is amended and the  
21 section is amended by adding a subsection to read:

22 § 5328. Factors to consider when awarding custody.

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

28 (1) Which party is more likely to ensure the health and  
29 safety of the child. No form of custody may be awarded to a  
30 parent or party who jeopardizes the health and safety of the

1 child by unreasonably placing the child at substantial risk  
2 of severe emotional distress or bodily injury.

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 child abuse or domestic  
6 violence or if the child's physical or emotional well-being  
7 is jeopardized by one of the parties.

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 (2.2) A history of abuse committed by a party or member  
17 of the party's household against any of the following:

18 (i) The other party.

19 (ii) A child in the party's household.

20 (iii) Any other party who currently or formerly  
21 resided in the party's household.

22 (2.3) A significant history of violent, assaultive or  
23 abusive behavior committed by a party or a member of the  
24 party's household outside of the household or against a  
25 nonfamily member that jeopardizes the health and safety of  
26 the child by unreasonably placing the child at substantial  
27 risk of severe emotional distress or bodily injury.

28 (3) The present and past parental and caretaker duties  
29 performed by each party on behalf of the child.

30 (4) The need for stability and continuity in the child's

1 education, family life and community life except if changes  
2 are necessary to protect the health and safety of the child.

3 (5) The availability of extended family.

4 (6) The child's sibling relationships.

5 (7) The well-reasoned preference of the child, based on  
6 the child's maturity and judgment. In assessing the factor  
7 under this paragraph, the child's fear of a parent based on  
8 the parent's specific conduct that is contrary to the child's  
9 best interest shall be considered well-reasoned.

10 (8) The attempts of a parent to turn the child against  
11 the other parent as proven by competent and admissible  
12 evidence, except in cases of child abuse or domestic violence  
13 where reasonable safety measures are necessary to protect the  
14 child from harm. The following apply:

15 (i) A parent's reasonable concerns for a child's  
16 safety and welfare and the parent's reasonable efforts to  
17 educate, support and protect the child shall not be  
18 considered attempts to turn the child against the other  
19 parent.

20 (ii) In cases of child abuse and domestic violence,  
21 the court shall not use the factor under this paragraph  
22 in ordering any form of custody.

23 (iii) A child's deficient or negative relationship  
24 with a parent shall not be presumed to be caused by the  
25 other parent.

26 (iv) An order aimed at remediating a negative  
27 parent-child relationship shall account for the behaviors  
28 that the child's disfavored parent may have contributed  
29 to the negative parent-child relationship.

30 (9) Which party is more likely to maintain a loving,

1 stable, consistent and nurturing relationship with the child  
2 adequate for the child's emotional needs.

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

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

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

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

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

16 (15) The mental and physical condition of a party or  
17 member of a party's household[.], including, but not limited  
18 to, a risk to self, the child in particular or others, that  
19 creates a risk to the health and safety of the child or a  
20 party.

21 (15.1) Allegations of child abuse or a history of  
22 domestic violence in the presence of the child. The following  
23 shall apply:

24 (i) An evidentiary hearing limited to evidence  
25 related to the issue of child abuse or domestic violence  
26 shall be held if consideration is given under this  
27 paragraph.

28 (ii) A parent's good faith disclosure of a  
29 communication to the parent by the child of child abuse  
30 or domestic violence shall not be a factor that weighs

1 against the safe parent in determining custody.

2 (iii) If the court finds by clear and convincing  
3 evidence an act of child abuse or a pattern of domestic  
4 violence, including sexual abuse and trauma, by a parent,  
5 the court shall award sole physical custody of the child  
6 to the safe parent or party and shall suspend any  
7 physical custody, except that it may award supervised  
8 physical custody if it is in the best interest of the  
9 child and supervised physical custody would protect the  
10 health and safety of the child, to the parent engaged in  
11 a pattern of domestic violence or abusive behavior. If a  
12 parent shows by clear and convincing evidence that the  
13 parent is no longer a threat to the health and safety of  
14 the child after completion of a court-approved treatment  
15 plan, the court may award custody other than supervised  
16 physical custody to the parent. Any cost incurred for  
17 supervised physical custody shall be paid by the abusing  
18 parent.

19 (iv) Statements and testimony provided pursuant to  
20 an evidentiary hearing under this paragraph may not be  
21 used in another civil proceeding, criminal trial or any  
22 other forum.

23 (15.2) Evidence of child abuse.

24 (16) Any other relevant factor.

25 (a.1) Conditions.--

26 (1) In considering the awarding of custody, including  
27 psychological or medical theories proffered by the parties  
28 under subsection (a), the court shall:

29 (i) Consider evidence of the parent's current mental  
30 health condition and the risk that the parent will again



1 subject the child or other household members to domestic  
2 abuse or unreasonably permit abuse to a child despite  
3 having the ability to prevent the abuse.

4 (ii) Order custody only if the parent proves by  
5 clear and convincing evidence that the custody is in the  
6 best interest of the child and that the parent will not  
7 cause any unreasonable physical, emotional or  
8 psychological harm to the child.

9 (iii) In the case of a supervised physical custody  
10 imposed on a parent, order restrictions, conditions and  
11 safeguards necessary to minimize any risk of harm to the  
12 child, including extending the supervised physical  
13 custody.

14 (2) A supervised physical custody arrangement imposed on  
15 a parent by a court shall be conducted by a court-approved  
16 professional in a therapeutic setting and under conditions  
17 that ensure the health and safety of the child. The  
18 supervised physical custody arrangement shall not be  
19 conducted in the parent's home and shall not extend  
20 overnight. All costs of the supervision shall be paid by the  
21 parent awarded supervised physical custody.

22 (3) No act of self-defense by a parent in response to  
23 the family violence or domestic abuse of the other parent  
24 shall be deemed family violence or domestic violence for the  
25 purposes of this section.

26 (4) All costs, including the other parent's attorney  
27 fees and the fees of any counsel for the child and all  
28 treatment expenses incurred in compliance with this section,  
29 shall be paid by the parent who is found to have committed  
30 child abuse or domestic violence.

1 \* \* \*

2 Section 5. Sections 5329(a), 5334(c), 5335(b) and 5339 of  
3 Title 23 are amended to read:

4 § 5329. Consideration of criminal conviction.

5 (a) Offenses.--Where a party seeks any form of custody, the  
6 court shall consider whether that party or member of that  
7 party's household has been convicted of or has pleaded guilty or  
8 no contest to any of the offenses in this section or an offense  
9 in another jurisdiction substantially equivalent to any of the  
10 offenses in this section. The court shall consider such conduct  
11 and determine that the party does not pose a threat of harm to  
12 the child before making any order of custody to that party when  
13 considering the following offenses:

14 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

15 18 Pa.C.S. § 2702 (relating to aggravated assault).

16 18 Pa.C.S. § 2706 (relating to terroristic threats).

17 18 Pa.C.S. § 2709.1 (relating to stalking).

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

19 18 Pa.C.S. § 2718 (relating to strangulation).

20 18 Pa.C.S. § 2902 (relating to unlawful restraint).

21 18 Pa.C.S. § 2903 (relating to false imprisonment).

22 18 Pa.C.S. § 2910 (relating to luring a child into a motor  
23 vehicle or structure).

24 18 Pa.C.S. § 3121 (relating to rape).

25 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

26 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual  
27 intercourse).

28 18 Pa.C.S. § 3124.1 (relating to sexual assault).

29 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

30 18 Pa.C.S. § 3126 (relating to indecent assault).

1 18 Pa.C.S. § 3127 (relating to indecent exposure).

2 18 Pa.C.S. § 3129 (relating to sexual intercourse with  
3 animal).

4 18 Pa.C.S. § 3130 (relating to conduct relating to sex  
5 offenders).

6 18 Pa.C.S. § 3301 (relating to arson and related offenses).

7 18 Pa.C.S. § 4302 (relating to incest).

8 18 Pa.C.S. § 4303 (relating to concealing death of child).

9 18 Pa.C.S. § 4304 (relating to endangering welfare of  
10 children).

11 18 Pa.C.S. § 4305 (relating to dealing in infant children).

12 18 Pa.C.S. § 5902(b) (relating to prostitution and related  
13 offenses).

14 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other  
15 sexual materials and performances).

16 18 Pa.C.S. § 6301 (relating to corruption of minors).

17 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

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

19 18 Pa.C.S. § 6320 (relating to sexual exploitation of  
20 children).

21 Section 6114 (relating to contempt for violation of order or  
22 agreement).

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

25 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol  
26 or utilizing drugs).

27 Section 13(a)(1) of the act of April 14, 1972 (P.L.233,  
28 No.64), known as The Controlled Substance, Drug, Device and  
29 Cosmetic Act, to the extent that it prohibits the manufacture,  
30 sale or delivery, holding, offering for sale or possession of

1 any controlled substance or other drug or device.

2 \* \* \*

3 § 5334. Guardian ad litem for child.

4 \* \* \*

5 (c) Abuse.--If substantial allegations of abuse of the child  
6 or substantial allegations of domestic violence which impacts  
7 the child are made, the court shall appoint a guardian ad litem  
8 for the child if:

9 (1) counsel for the child is not appointed under section  
10 5335 (relating to counsel for child); [or]

11 (2) the court is satisfied that the relevant information  
12 will be presented to the court only with such appointment[.];  
13 or

14 (3) the guardian ad litem establishes that the guardian  
15 ad litem received education and training under the program  
16 specified under 42 Pa.C.S. § 1908 (relating to child abuse  
17 and domestic violence education and training program for  
18 judges and court personnel) or substantially similar  
19 training.

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

29 (a) Award.--Under this chapter, a court may award reasonable  
30 interim or final counsel fees, costs and expenses to a party if

1 the court finds that the conduct of another party was obdurate,  
2 vexatious, repetitive or in bad faith.

3 (b) Other costs.--The court may direct that a party who has  
4 been found to have perpetrated abuse to pay all or a portion of  
5 the fees, costs and expenses incurred by the other party,  
6 including attorney fees, costs relating to any counsel for the  
7 child and treatment expenses incurred relating to the abuse.

8 Section 6. Title 42 is amended by adding a section to read:  
9 § 1908. Child abuse and domestic violence education and  
10 training program for judges and court personnel.

11 The Administrative Office of Pennsylvania Courts may develop  
12 and implement an ongoing education and training program for  
13 judges, including magisterial district judges, and relevant  
14 court personnel, including guardians ad litem, regarding child  
15 abuse, including child sexual abuse and trauma, domestic  
16 violence and the impact of child abuse and domestic violence on  
17 children. The education and training program shall include the  
18 latest best practices from evidence-based and peer-reviewed  
19 research. The education and training program shall be designed  
20 to improve the ability of courts to recognize and respond to the  
21 impact of child abuse, domestic violence and trauma on all  
22 victims, specifically children, and make appropriate custody  
23 decisions that are in the best interest of the child.

24 Section 7. Section 5983(a) of Title 42 is amended to read:  
25 § 5983. Rights and services.

26 (a) Designation of persons to act on behalf of children.--  
27 Courts of common pleas may designate one or more persons as a  
28 child advocate to provide the following services on behalf of  
29 children who are involved in criminal proceedings as victims or  
30 material witnesses[.] or children who are the subject of custody

1 proceedings and who are alleged to have been abused by a party  
2 in the custody proceedings or have been impacted by domestic  
3 violence perpetrated by a party in the custody proceedings:

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

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

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

13 \* \* \*

14 Section 8. This act shall take effect in 60 days.