
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 868 Session of
2019

INTRODUCED BY SANTARSIERO, FONTANA, MUTH, HUGHES, COLLETT,
BREWSTER, SCHWANK, COSTA, BLAKE AND MENSCH,
SEPTEMBER 30, 2019

REFERRED TO JUDICIARY, SEPTEMBER 30, 2019

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
21 intimate partner relationship designed to maintain control
22 over the partner and make the major decisions in the

1 relationship.

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

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

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

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

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

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

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

27 (iii) Encourage custody court professionals to
28 utilize current and valid scientific research in making
29 decisions regarding child custody.

30 Section 2. The definition of "abuse" in section 5322(a) of

1 Title 23 of the Pennsylvania Consolidated Statutes is amended
2 and the subsection is amended by adding definitions to read:
3 § 5322. Definitions.

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

7 "Abuse." As follows:

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

10 (i) The crime of harassment pursuant to 18 Pa.C.S. §
11 2709 (relating to harassment).

12 (ii) The crime of stalking pursuant to 18 Pa.C.S. §
13 2709.1 (relating to stalking).

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

19 * * *

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

23 * * *

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

28 Section 3. Section 5323(e) of Title 23 is amended to read:
29 § 5323. Award of custody.

30 * * *

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

16 * * *

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

19 § 5328. Factors to consider when awarding custody.

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

25 (1) Which party is more likely to ensure the health and
26 safety of the child. No form of custody may be awarded to a
27 parent or party who jeopardizes the health and safety of the
28 child by unreasonably placing the child at substantial risk
29 of severe emotional distress or bodily injury.

30 [(1)] (1.1) Which party is more likely to encourage and

1 permit frequent and continuing contact between the child and
2 another party[.], except in cases of child abuse or domestic
3 violence or if the child's physical or emotional well-being
4 is jeopardized by one of the parties.

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

10 (2.1) The information set forth in section 5329.1(a)
11 (relating to consideration of child abuse and involvement
12 with protective services).

13 (2.2) A history of abuse committed by a party or member
14 of the party's household against any of the following:

15 (i) The other party.

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

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

19 (2.3) A significant history of violent, assaultive or
20 abusive behavior committed by a party or a member of the
21 party's household outside of the household or against a
22 nonfamily member that jeopardizes the health and safety of
23 the child by unreasonably placing the child at substantial
24 risk of severe emotional distress or bodily injury.

25 (3) The present and past parental [duties] and caretaker
26 duties performed by each party on behalf of the child.

27 (4) The need for stability and continuity in the child's
28 education, family life and community life except if changes
29 are necessary to protect the health and safety of the child.

30 (5) The availability of extended family.

1 (6) The child's sibling relationships.

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

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

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

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

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

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

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

30 (10) Which party is more likely to attend to the daily

1 physical, emotional, developmental, educational and special
2 needs of the child.

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

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

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

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

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

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

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

25 (ii) A parent's good faith disclosure of a
26 communication to the parent by the child of child abuse
27 or domestic violence shall not be a factor that weighs
28 against the safe parent in determining custody.

29 (iii) If the court finds by clear and convincing
30 evidence an act of child abuse or a pattern of domestic

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

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

20 (15.2) Evidence of child abuse.

21 (16) Any other relevant factor.

22 (a.1) Conditions.--

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

26 (i) Consider evidence of the parent's current mental
27 health condition and the risk that the parent will again
28 subject the child or other household members to domestic
29 abuse or unreasonably permit abuse to a child despite
30 having the ability to prevent the abuse.

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

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

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

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

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

28 * * *

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

1 § 5329. Consideration of criminal conviction.

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

11 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

12 18 Pa.C.S. § 2702 (relating to aggravated assault).

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

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

15 18 Pa.C.S. § 2718 (relating to strangulation).

16 18 Pa.C.S. § 2901 (relating to kidnapping).

17 18 Pa.C.S. § 2902 (relating to unlawful restraint).

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

19 18 Pa.C.S. § 2910 (relating to luring a child into a motor
20 vehicle or structure).

21 18 Pa.C.S. § 3121 (relating to rape).

22 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

23 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
24 intercourse).

25 18 Pa.C.S. § 3124.1 (relating to sexual assault).

26 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

27 18 Pa.C.S. § 3126 (relating to indecent assault).

28 18 Pa.C.S. § 3127 (relating to indecent exposure).

29 18 Pa.C.S. § 3129 (relating to sexual intercourse with
30 animal).

1 18 Pa.C.S. § 3130 (relating to conduct relating to sex
2 offenders).

3 18 Pa.C.S. § 3301 (relating to arson and related offenses).

4 18 Pa.C.S. § 4302 (relating to incest).

5 18 Pa.C.S. § 4303 (relating to concealing death of child).

6 18 Pa.C.S. § 4304 (relating to endangering welfare of
7 children).

8 18 Pa.C.S. § 4305 (relating to dealing in infant children).

9 18 Pa.C.S. § 5902(b) (relating to prostitution and related
10 offenses).

11 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other
12 sexual materials and performances).

13 18 Pa.C.S. § 6301 (relating to corruption of minors).

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

15 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

16 18 Pa.C.S. § 6320 (relating to sexual exploitation of
17 children).

18 Section 6114 (relating to contempt for violation of order or
19 agreement).

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

22 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol
23 or utilizing drugs).

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

29 * * *

30 § 5334. Guardian ad litem for child.

1 * * *

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

6 (1) counsel for the child is not appointed under section
7 5335 (relating to counsel for child); [or]

8 (2) the court is satisfied that the relevant information
9 will be presented to the court only with such appointment[.];
10 or

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

17 * * *

18 § 5335. Counsel for child.

19 * * *

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

24 * * *

25 § 5339. Award of counsel fees, costs and expenses.

26 (a) Award.--Under this chapter, a court may award reasonable
27 interim or final counsel fees, costs and expenses to a party if
28 the court finds that the conduct of another party was obdurate,
29 vexatious, repetitive or in bad faith.

30 (b) Other costs.--The court may direct that a party who has

1 been found to have perpetrated abuse to pay all or a portion of
2 the fees, costs and expenses incurred by the other party,
3 including attorney fees, costs relating to any counsel for the
4 child and treatment expenses incurred relating to the abuse.

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

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

21 Section 7. Section 5983(a) of Title 42 is amended to read:
22 § 5983. Rights and services.

23 (a) Designation of persons to act on behalf of children.--
24 Courts of common pleas may designate one or more persons as a
25 child advocate to provide the following services on behalf of
26 children who are involved in criminal proceedings as victims or
27 material witnesses[.] or children who are the subject of custody
28 proceedings and who are alleged to have been abused by a party
29 in the custody proceedings or have been impacted by domestic
30 violence perpetrated by a party in the custody proceedings:

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

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

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

10 * * *

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