
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 78 Session of
2021

INTRODUCED BY BAKER, SANTARSIERO, VOGEL, KEARNEY, FONTANA,
BARTOLOTTA, COLLETT, HUGHES, MARTIN, YUDICHAK, BLAKE, COSTA,
SCHWANK, BROWNE, PHILLIPS-HILL, MENSCH, YAW AND MUTH,
JANUARY 22, 2021

REFERRED TO JUDICIARY, JANUARY 22, 2021

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; and,
8 in Administrative Office of Pennsylvania Courts, providing
9 for child abuse and domestic abuse education and training
10 program for judges and court personnel.

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

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

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

18 (2) Domestic abuse is a pattern of abuse within the
19 family or household and can include abuse of a partner,
20 spouse, child or pet.

21 (3) Although abusers often use physical violence as one

1 of the tactics to commit domestic abuse, these tactics are
2 not necessarily physical or illegal.

3 (4) These tactics can include verbal, emotional,
4 psychological and economic abuse, isolation, threats,
5 controlling behaviors, monitoring, litigation abuse and
6 threats to seek or demands for custody or joint custody to
7 pressure the partner to return or punish the partner for
8 leaving.

9 (5) The health and safety of all children in this
10 Commonwealth must be the first priority in all decisions
11 concerning child custody.

12 (6) It is the intent of the General Assembly to ensure
13 that in all cases and controversies before the courts
14 involving questions of child custody, the health, safety and
15 welfare of the child are protected and regarded as issues of
16 paramount importance.

17 Section 2. The definition of "abuse" in section 5322(a) of
18 Title 23 of the Pennsylvania Consolidated Statutes is amended
19 and the subsection is amended by adding definitions to read:
20 § 5322. Definitions.

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

24 "Abuse." As follows:

25 (1) As defined in section 6102 (relating to definitions)
26 [.] and the term includes the crime of stalking pursuant to
27 18 Pa.C.S. § 2709.1 (relating to stalking).

28 (2) The term does not include the justified use of force
29 in self-protection or for the protection of other persons in
30 accordance with 18 Pa.C.S. § 505 (relating to use of force in

1 self-protection) by a party in response to abuse or domestic
2 abuse by the other party.

3 * * *

4 "Health and safety of the child." The term includes, but is
5 not limited to, the physical, emotional and psychological well-
6 being of the child.

7 * * *

8 "Nonprofessional supervised physical custody." Custodial
9 time during which an agency or an adult, who is not a licensed
10 professional designated by the court or agreed upon by the
11 parties, monitors the interaction between the child and the
12 individual with those rights.

13 "Professional supervised physical custody." Custodial time
14 during which a licensed professional monitors the interaction
15 between the child and the individual with those custody rights
16 and promotes the child's health and safety during the
17 interaction.

18 Section 3. Section 5323(e) of Title 23 is amended and the
19 section is amended by adding subsections to read:

20 § 5323. Award of custody.

21 * * *

22 (e) Safety conditions.--After considering the factors under
23 [section 5328(a)(2)] sections 5328, 5329 (relating to
24 consideration of criminal conviction), 5329.1 (relating to
25 consideration of child abuse and involvement with protective
26 services) and 5330 (relating to consideration of criminal
27 charge), if the court finds [that there is an ongoing] a history
28 of abuse of the child or a household member by a party or risk
29 of harm to the child or an abused party and awards any form of
30 custody to a party who committed the abuse or who has a

1 household member who committed the abuse, the court shall
2 include in the custody order safety conditions [designed],
3 restrictions or safeguards as necessary to protect the child or
4 the abused party[.], including:

5 (1) Nonprofessional supervised physical custody.

6 (2) Professional supervised physical custody.

7 (3) Limitations on the time of day that physical custody
8 is permitted or on the number of hours of physical custody
9 and the maximum number of hours of physical custody permitted
10 per day or per week.

11 (4) Appoint a qualified professional specializing in
12 treatment relating to the history of abuse or risk of harm to
13 provide counseling. Counseling may include a program of
14 treatment or individual therapy designed to rehabilitate the
15 offending individual, which includes issues regarding
16 physical or sexual abuse, domestic abuse, the psychology of
17 the offender and the effects of abuse on the victim and the
18 child. If counseling is ordered the court may require an
19 evaluation by the appointed qualified professional to
20 determine whether further counseling of the offender is
21 necessary.

22 (5) Limitations on legal custody.

23 (6) Any other safety condition, restriction or safeguard
24 as necessary to ensure the health and safety of the child.

25 (e.1) Supervision.--If a court finds by a preponderance of
26 the evidence that a party has subjected the child or any
27 household member to abuse, the court shall be presumed to only
28 allow nonprofessional supervised physical custody or
29 professional supervised physical custody between the child and
30 the party who committed the abuse unless the court makes a

1 finding on the record that it finds by a preponderance of the
2 evidence that the party no longer poses a risk of abuse to the
3 child or any other household member and that another custody
4 arrangement is in the best interest of the child and will not
5 cause physical, emotional or psychological harm to the child.

6 (e.2) Professional supervision.--If a court finds by a
7 preponderance of the evidence that there is an ongoing risk of
8 abuse of the child, the court shall be presumed to only allow
9 professional supervised physical custody between the child and
10 the party who committed the abuse unless the court makes a
11 finding on the record that it finds by a preponderance of the
12 evidence that the party no longer poses a risk of abuse to the
13 child or any other household member and that another custody
14 arrangement is in the best interest of the child and will not
15 cause physical, emotional or psychological harm to 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.

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
2 continued risk of harm to the child or an abused party and
3 which party can better provide adequate physical safeguards
4 and supervision of the child.]

5 (2.1) The information set forth in section 5329.1(a)
6 (relating to consideration of child abuse and involvement
7 with protective services).

8 (2.2) Violent or assaultive behavior committed by a
9 party, including past or current protection from abuse and
10 sexual violence abuse protection orders.

11 (2.3) Which party is more likely to encourage and permit
12 frequent and continuing contact between the child and another
13 party if contact is consistent with the health and safety
14 needs of the child.

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

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

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 developmental stage, maturity and judgment. In
24 assessing the factor under this paragraph, the child's fear
25 of a party based on the party's specific conduct that is
26 contrary to the child's best interest shall be considered
27 well-reasoned.

28 (8) The attempts of a [parent] party to turn the child
29 against the other [parent] party, except in cases of abuse
30 [domestic violence] where reasonable safety measures are

1 necessary to protect the health and safety of the child from
2 harm.

3 A party's reasonable concerns for a child's health
4 and welfare and the party's reasonable efforts to protect
5 the child shall not be considered attempts to turn the
6 child against the other party. A child's deficient or
7 negative relationship with a party shall not be presumed
8 to be caused by the other party.

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

12 (10) Which party is more likely to attend to the daily
13 physical, emotional, developmental, educational and special
14 needs of the child.

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

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

18 (13) The level of conflict between the parties and the
19 willingness and ability of the parties to cooperate with one
20 another. A party's effort to protect a child or self from
21 abuse by another party is not evidence of unwillingness or
22 inability to cooperate with that party.

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

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

27 (16) Any other relevant factor.

28 (a.1) Exception.--None of the factors in subsection (a)
29 shall be adversely weighed against a party if that party or the
30 child was subjected to abuse by the other party.

1 * * *

2 Section 5. Section 5329(a) of Title 23, amended June 5, 2020
3 (P.L.246, No.32), is 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. § 2701 (relating to simple assault).

16 18 Pa.C.S. § 2702 (relating to aggravated assault).

17 18 Pa.C.S. § 2705 (relating to recklessly endangering another
18 person).

19 18 Pa.C.S. § 2706 (relating to terroristic threats).

20 18 Pa.C.S. § 2709.1 (relating to stalking).

21 18 Pa.C.S. § 2718 (relating to strangulation).

22 18 Pa.C.S. § 2901 (relating to kidnapping).

23 18 Pa.C.S. § 2902 (relating to unlawful restraint).

24 18 Pa.C.S. § 2903 (relating to false imprisonment).

25 18 Pa.C.S. § 2910 (relating to luring a child into a motor
26 vehicle or structure).

27 18 Pa.C.S. § 3011 (relating to trafficking in individuals).

28 18 Pa.C.S. § 3012 (relating to involuntary servitude).

29 18 Pa.C.S. § 3013 (relating to patronizing a victim of sexual
30 servitude).

1 18 Pa.C.S. § 3121 (relating to rape).
2 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).
3 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
4 intercourse).
5 18 Pa.C.S. § 3124.1 (relating to sexual assault).
6 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
7 18 Pa.C.S. § 3126 (relating to indecent assault).
8 18 Pa.C.S. § 3127 (relating to indecent exposure).
9 18 Pa.C.S. § 3129 (relating to sexual intercourse with
10 animal).
11 18 Pa.C.S. § 3130 (relating to conduct relating to sex
12 offenders).
13 18 Pa.C.S. § 3301 (relating to arson and related offenses).
14 18 Pa.C.S. § 4302 (relating to incest).
15 18 Pa.C.S. § 4303 (relating to concealing death of child).
16 18 Pa.C.S. § 4304 (relating to endangering welfare of
17 children).
18 18 Pa.C.S. § 5533 (relating to cruelty to animal).
19 18 Pa.C.S. § 5534 (relating to aggravated cruelty to animal).
20 18 Pa.C.S. § 5543 (relating to animal infighting).
21 18 Pa.C.S. § 5544 (relating to possession of animal fighting
22 paraphernalia).
23 18 Pa.C.S. § 4305 (relating to dealing in infant children).
24 18 Pa.C.S. § 5902(b) (relating to prostitution and related
25 offenses).
26 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other
27 sexual materials and performances).
28 18 Pa.C.S. § 6301 (relating to corruption of minors).
29 18 Pa.C.S. § 6312 (relating to sexual abuse of children).
30 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

1 18 Pa.C.S. § 6320 (relating to sexual exploitation of
2 children).

3 Section 6114 (relating to contempt for violation of order or
4 agreement).

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

7 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol
8 or utilizing drugs).

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

14 * * *

15 Section 6. Sections 5334(c), 5335(b) and 5339 of Title 23
16 are amended to read:

17 § 5334. Guardian ad litem for child.

18 * * *

19 (c) Abuse.--If substantial allegations of abuse [of the
20 child] are made, the court [shall] may appoint a guardian ad
21 litem for the child if:

22 (1) counsel for the child is not appointed under section
23 5335 (relating to counsel for child); [or]

24 (2) the court is satisfied that the relevant information
25 will be presented to the court only with such appointment[.];
26 or

27 (3) a guardian ad litem appointed under this section
28 shall establish that the guardian ad litem received education
29 and training under the program specified under 42 Pa.C.S. §
30 1908 (relating to child abuse and domestic abuse education

1 and training program for judges and court personnel) or
2 substantially similar training prior to appointment.

3 * * *

4 § 5335. Counsel for child.

5 * * *

6 (b) Abuse.--Substantial allegations of abuse [of the child]
7 constitute a reasonable basis for appointing counsel for the
8 child.

9 * * *

10 § 5339. Award of counsel fees, costs and expenses.

11 (a) Award.--Under this chapter, a court may award reasonable
12 interim or final counsel fees, costs and expenses to a party if
13 the court finds that the conduct of another party was obdurate,
14 vexatious, repetitive or in bad faith. This section may not
15 apply if that party engaged the judicial process in good faith
16 to protect the child from harm.

17 (b) Other costs.--The court may direct that a party who has
18 been found to have perpetrated abuse to pay all or a portion of
19 the fees, costs and expenses incurred by the other party,
20 including attorney fees, costs relating to any counsel for the
21 child and treatment expenses incurred relating to the abuse,
22 including fees associated with any form of supervised physical
23 custody.

24 Section 7. Title 42 is amended by adding a section to read:
25 § 1908. Child abuse and domestic abuse education and training
26 program for judges and court personnel.

27 The Administrative Office of Pennsylvania Courts may develop
28 and implement an ongoing education and training program for
29 judges, magisterial district judges and relevant court
30 personnel, including guardians ad litem, counsel for children,

1 masters and mediators, regarding child abuse, which includes all
2 aspects of maltreatment, including sexual abuse, physical abuse,
3 emotional abuse, implicit and explicit bias, trauma and neglect
4 and the impact of child abuse and domestic violence on children.
5 The education and training program shall include the latest best
6 practices from evidence-based and peer-reviewed research by
7 recognized experts in the types of abuse designated under this
8 section. The education and training program shall be designed to
9 improve the ability of courts to recognize and respond to the
10 impact of child abuse, domestic abuse and trauma on all victims,
11 specifically children, and make appropriate custody decisions
12 that are in the best interest of the child.

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