

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 55 Session of 2023

INTRODUCED BY SANTARSIERO, BAKER, HUGHES, FONTANA, COMITTA, MILLER, CULVER, HAYWOOD, BREWSTER, DILLON, COSTA, PHILLIPS-HILL, PENNYCUICK, BROWN, BARTOLOTTA, SCHWANK, COLLETT, MARTIN, TARTAGLIONE AND DUSH, OCTOBER 11, 2023

SENATOR BAKER, JUDICIARY, AS AMENDED, OCTOBER 17, 2023

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
26 definitions). The term includes the crime of stalking
27 pursuant to 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 "Household member." A spouse or an individual who has been a
5 spouse, an individual living as a spouse or who lived as a
6 spouse, a parent or child, another individual related by
7 consanguinity or affinity, a current or former sexual or
8 intimate partner, an individual who shares biological parenthood
9 or any other person, who is currently sharing a household with <--
10 the child or a party.

11 * * *

12 "Nonprofessional supervised physical custody." Custodial
13 time during which an adult, designated by the court or agreed
14 upon by the parties, monitors the interaction between the child
15 and the individual with those rights.

16 * * *

17 "Professional supervised physical custody." Custodial time
18 during which a professional, with education and training on the
19 dynamics of domestic violence, sexual assault, child abuse,
20 trauma and the impact of domestic violence on children, oversees
21 the interaction between the child and the individual with those
22 custody rights and promotes the safety of the child during the
23 interaction.

24 * * *

25 "Safety of the child." The term includes, but is not limited
26 to, the physical, emotional and psychological well-being of the
27 child.

28 * * *

29 "Temporary housing instability." A period not to exceed six
30 months from the date of the last incident of abuse as determined

1 by a court.

2 * * *

3 Section 3. Sections 5323(e), 5328(a), 5329(a) and 5334(c) of
4 Title 23 are amended and the sections are amended by adding
5 subsections to read:

6 § 5323. Award of custody.

7 * * *

8 (e) Safety conditions.--

9 (1) After considering the factors under [section 5328(a)
10 (2)] sections 5328, 5329 (relating to consideration of
11 criminal conviction), 5329.1 (relating to consideration of
12 child abuse and involvement with protective services) and
13 5330 (relating to consideration of criminal charge), if the
14 court finds [that there is an ongoing] a history of abuse of
15 the child or a household member by a party or a present risk
16 of harm to the child or an abused party and awards any form
17 of custody to a party who committed the abuse or who has a
18 household member who committed the abuse, the court shall
19 include in the custody order:

20 (i) The safety conditions [designed], restrictions
21 or safeguards as reasonably necessary to protect the
22 child or the abused party.

23 (ii) The reason for imposing the safety conditions,
24 restrictions or safeguards, including an explanation why
25 the safety conditions, restrictions or safeguards are in
26 the best interest of the child or the abused party.

27 (iii) The reasons why unsupervised physical custody
28 is in the best interest of the child if the court finds
29 that past abuse was committed by a party.

30 (2) If supervised contact is ordered, there shall be a

1 review of the risk of harm and need for continued supervision
2 upon petition of the party. The safety conditions,
3 restrictions or safeguards may include any of the following:

4 (i) Nonprofessional supervised physical custody.

5 (ii) Professional supervised physical custody.

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

10 (iv) The appointment of a qualified professional
11 specializing in programming relating to the history of
12 abuse or risk of harm to provide batterer's intervention
13 ~~or~~ AND harm prevention programming. Batterer's <--
14 intervention and harm prevention programming may include
15 programming designed to rehabilitate the offending
16 individual, including prioritizing a batterer's
17 intervention ~~or~~ AND harm prevention program, if <--
18 available, or the impacts of physical, sexual or domestic
19 abuse on the victim. The court may order an evaluation by
20 the appointed qualified professional under this paragraph
21 to determine whether additional programming is necessary.

22 (v) Limitations on legal custody.

23 (vi) Any other safety condition, restriction or
24 safeguard as necessary to ensure the safety of the child
25 or to protect a household member.

26 (e.1) Supervised physical custody.--If a court finds by a
27 preponderance of the evidence that there is an ongoing risk of
28 abuse of the child, there shall be a rebuttable presumption that
29 the court shall only allow supervised physical custody between
30 the child and the party who poses the risk of abuse. A court may

1 find that an indicated report for physical or sexual abuse under
2 Chapter 63 (relating to child protective services) is a basis
3 for a finding of abuse under this subsection only after a de
4 novo review of the circumstances leading to the indicated
5 report. When awarding supervised physical custody under this
6 subsection, the court shall favor professional supervised
7 physical custody. The court may award nonprofessional supervised
8 physical custody if:

9 (1) the court determines that professional supervised
10 physical custody is not available within a reasonable
11 distance of the parties or the court determines that the
12 party requiring supervised physical custody is unable to pay
13 for the professional supervised physical custody; and

14 (2) the court designates an adult to supervise the
15 custodial visits who has appeared in person before the court,
16 the individual executes an affidavit of accountability and
17 the court makes finding, on the record, that the individual
18 is capable of promoting the safety of the child.

19 * * *

20 § 5328. Factors to consider when awarding custody.

21 (a) Factors.--In ordering any form of custody, the court
22 shall determine the best interest of the child by considering
23 all relevant factors, giving substantial weighted consideration
24 to [those] the factors specified under paragraphs (1), (2),
25 (2.1) and (2.2) which affect the safety of the child, including
26 the following:

27 [(1) Which party is more likely to encourage and permit
28 frequent and continuing contact between the child and another
29 party.]

30 (1) Which party is more likely to ensure the safety of

1 the child.

2 (2) The present and past abuse committed by a party or
3 member of the party's household, [whether there is a
4 continued risk of harm to the child or an abused party and
5 which party can better provide adequate physical safeguards
6 and supervision of the child.] which may include past or
7 current protection from abuse or sexual violence protection
8 orders where there has been a finding of abuse.

9 (2.1) The information set forth in section 5329.1(a)
10 (relating to consideration of child abuse and involvement
11 with protective services).

12 (2.2) Violent or assaultive behavior committed by a
13 party.

14 (2.3) Which party is more likely to encourage and permit
15 frequent and continuing contact between the child and another
16 party if contact is consistent with the safety needs of the
17 child.

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

20 (4) The need for stability and continuity in the child's
21 education, family life and community life, except if changes
22 are necessary to protect the safety of the child or a party.

23 (5) The availability of extended family.

24 (6) The child's sibling relationships.

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

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

1 A party's reasonable concerns for the safety of the child and
2 the party's reasonable efforts to protect the child shall not
3 be considered attempts to turn the child against the other
4 party. A child's deficient or negative relationship with a
5 party shall not be presumed to be caused by the other party.

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

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

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

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

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

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

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

24 (16) Any other relevant factor.

25 (a.1) Exception.--A factor under subsection (a) shall not be
26 adversely weighed against a party if the circumstances related
27 to the factor were in response to abuse or necessary to protect
28 the child or the abused party from harm and the party alleging
29 abuse does not pose a risk to the safety of the child at the
30 time of the custody hearing. Temporary housing instability as a

1 result of abuse shall not be considered against the party
2 alleging abuse.

3 (a.2) Determination.--No single factor under subsection
4 (a) shall by itself be determinative in the awarding of custody.
5 The court shall examine the totality of the circumstances,
6 giving weighted consideration to the factors that affect the
7 safety of the child, when issuing a custody order that is in the
8 best interest of the child.

9 * * *

10 § 5329. Consideration of criminal conviction.

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

20 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

21 18 Pa.C.S. § 2701 (relating to simple assault).

22 18 Pa.C.S. § 2702 (relating to aggravated assault).

23 18 Pa.C.S. § 2705 (relating to recklessly endangering another
24 person).

25 18 Pa.C.S. § 2706 (relating to terroristic threats).

26 18 Pa.C.S. § 2709.1 (relating to stalking).

27 18 Pa.C.S. § 2718 (relating to strangulation).

28 18 Pa.C.S. § 2901 (relating to kidnapping).

29 18 Pa.C.S. § 2902 (relating to unlawful restraint).

30 18 Pa.C.S. § 2903 (relating to false imprisonment).

1 18 Pa.C.S. § 2904 (relating to interference with custody of
2 children).

3 18 Pa.C.S. § 2910 (relating to luring a child into a motor
4 vehicle or structure).

5 18 Pa.C.S. Ch. 30 (relating to human trafficking).

6 18 Pa.C.S. § 3121 (relating to rape).

7 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

8 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
9 intercourse).

10 18 Pa.C.S. § 3124.1 (relating to sexual assault).

11 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

12 18 Pa.C.S. § 3126 (relating to indecent assault).

13 18 Pa.C.S. § 3127 (relating to indecent exposure).

14 18 Pa.C.S. § 3129 (relating to sexual intercourse with
15 animal).

16 18 Pa.C.S. § 3130 (relating to conduct relating to sex
17 offenders).

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

19 18 Pa.C.S. § 4302 (relating to incest).

20 18 Pa.C.S. § 4303 (relating to concealing death of child).

21 18 Pa.C.S. § 4304 (relating to endangering welfare of
22 children).

23 18 Pa.C.S. § 4305 (relating to dealing in infant children).

24 18 Pa.C.S. § 5533 (relating to cruelty to animal).

25 18 Pa.C.S. § 5534 (relating to aggravated cruelty to animal).

26 18 Pa.C.S. § 5543 (relating to animal fighting).

27 18 Pa.C.S. § 5544 (relating to possession of animal fighting
28 paraphernalia).

29 18 Pa.C.S. § 5902(b) or (b.1) (relating to prostitution and
30 related offenses).

1 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other
2 sexual materials and performances).

3 18 Pa.C.S. § 6301 (relating to corruption of minors).

4 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

5 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

6 18 Pa.C.S. § 6320 (relating to sexual exploitation of
7 children).

8 Section 6114 (relating to contempt for violation of order or
9 agreement).

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

12 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol
13 or utilizing drugs).

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

19 (a.1) Determination.--A criminal conviction specified under
20 subsection (a) shall not by itself be determinative in the
21 awarding of custody. The court shall examine the totality of the
22 circumstances when issuing a custody order that is in the best
23 interest of the child.

24 * * *

25 § 5334. Guardian ad litem for child.

26 * * *

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

30 (1) counsel for the child is not appointed under section

1 5335 (relating to counsel for child); [or] and

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

4 * * *

5 (f) Education and training.--A court appointing a guardian
6 ad litem under this section shall make reasonable efforts to
7 appoint a guardian ad litem who received evidence-based
8 education and training relating to child abuse, including child
9 sexual abuse, domestic abuse education and the effect of child
10 sexual abuse and domestic abuse on children.

11 Section 4. Sections 5335(b) and 5339 of Title 23 are amended
12 to read:

13 § 5335. Counsel for child.

14 * * *

15 (b) Abuse.--Substantial allegations of abuse [of the child]
16 constitute a reasonable basis for appointing counsel for the
17 child.

18 * * *

19 § 5339. Award of counsel fees, costs and expenses.

20 Under this chapter, a court may award reasonable interim or
21 final counsel fees, costs and expenses to a party if the court
22 finds that the conduct of another party was obdurate, vexatious,
23 repetitive or in bad faith. This section may not apply if that
24 party engaged the judicial process in good faith to protect the
25 child from harm.

26 Section 5. Title 42 is amended by adding a section to read:

27 § 1908. Child abuse and domestic abuse education and training
28 program for judges and court personnel.

29 (a) Program.--The Administrative Office of Pennsylvania
30 Courts may develop and implement an ongoing education and

1 training program for judges, magisterial district judges and
2 relevant court personnel, including guardians ad litem, counsel
3 for children, masters and mediators regarding child abuse. The
4 education and training program shall include all aspects of the
5 maltreatment of children, including all of the following:

6 (1) Sexual abuse.

7 (2) Physical abuse.

8 (3) Psychological and emotional abuse.

9 (4) Implicit and explicit bias.

10 (5) Trauma and neglect.

11 (6) The impact of child abuse and domestic violence on
12 children.

13 (b) Best practices.--The education and training program
14 under subsection (a) shall include the latest best practices
15 from evidence-based, peer-reviewed research by recognized
16 experts, including Statewide family violence experts, in the
17 types of child abuse specified under subsection (a). The
18 Administrative Office of Pennsylvania Courts shall design the
19 education and training program under subsection (a) to educate
20 and train relevant court personnel on all of the factors listed
21 under 23 Pa.C.S. § 5328(a) (relating to factors to consider when
22 awarding custody) and improve the ability of courts to make
23 appropriate custody decisions that are in the best interest of
24 the child, including education and training regarding the impact
25 of child abuse, domestic abuse and trauma on a victim,
26 specifically a child, and situations when one party attempts to
27 turn a child against another party.

28 (c) Federal grant funding.--The Administrative Office of
29 Pennsylvania Courts shall design the education and training
30 program under subsection (a) to conform with the requirements

1 for increased Federal grant funding under 34 U.S.C. § 10446(k)
2 (relating to State grants).

3 Section 6. This act shall take effect in 120 days.