

**JOINT STATE  
GOVERNMENT COMMISSION**  
General Assembly of the Commonwealth of Pennsylvania

**DOMESTIC RELATIONS LAW:  
LEGISLATION RECOMMENDED BY THE  
ADVISORY COMMITTEE ON  
DOMESTIC RELATIONS LAW  
1993-2010**

**MAY 2013**



**JOINT STATE GOVERNMENT COMMISSION**  
Serving the Pennsylvania General Assembly Since 1937

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The Joint State Government Commission was created by the act of July 1, 1937 (P.L.2460, No.459), as amended, and serves as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania. The Commission has the power to conduct investigations, study issues and gather information, as directed by resolution. In performing its duties, the Commission may call upon any department or agency of the Commonwealth of Pennsylvania for pertinent information and may designate individuals, other than members of the General Assembly, to act in advisory capacities. The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly.

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**Joint State Government Commission  
Room 108 Finance Building  
Harrisburg, PA 17120-0018**

**Telephone: 717-787-4397  
Fax: 717-787-7020**

**E-mail: [jntst02@legis.state.pa.us](mailto:jntst02@legis.state.pa.us)  
Website: <http://jsg.legis.state.pa.us>**

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The release of this report should not be interpreted as an endorsement by the members of the Executive Committee of the Joint State Government Commission of all the findings, recommendations or conclusions contained in this report.

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**General Assembly of the Commonwealth of Pennsylvania**  
**JOINT STATE GOVERNMENT COMMISSION**  
Room 108 Finance Building - 613 North Drive  
Harrisburg, PA 17120  
717-787-4397

**FLORINDO J. FABRIZIO**  
Chairman  
**JOHN C. RAFFERTY, JR.**  
Vice Chairman

May 2013

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**ADMINISTRATIVE STAFF:**

**GLENN J. PASEWICZ**  
Executive Director  
**STEPHEN F. REHRER**  
Counsel

To the Members of the General Assembly of Pennsylvania:

The Joint State Government Commission is pleased to present this report, *Domestic Relations Law: Legislation Recommended by the Advisory Committee on Domestic Relations Law (1993-2010)*, which provides a historical perspective regarding the work of the Advisory Committee on Domestic Relations Law. Created by 1993 Senate Resolution No. 43, the Advisory Committee has generated three reports that have served as the basis for legislation that has been introduced during multiple legislative sessions of the General Assembly. This legislation has involved divorce and equitable distribution, custody, and alimony and has resulted in four separate enactments from 2004 until 2010.

On behalf of the Joint State Government Commission, I would like to thank the members of the Advisory Committee, as well as the members of the legislative Task Force on Domestic Relations Law, for their dedication to improve the domestic relations law in the Commonwealth.

Respectfully submitted,

Glenn J. Pasewicz  
Executive Director

# **TASK FORCE ON DOMESTIC RELATIONS LAW**

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The following is a roster of the current and former members of the Task Force since its inception, with current members indicated with an asterisk.

\* Senator Stewart J. Greenleaf  
(Chair)

## **SENATE MEMBERS**

Senator Jay Costa, Jr.  
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\* Senator Daylin Leach  
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Representative Catherine M. Harper  
\* Representative Ron Marsico  
Representative Dennis M. O’Brien  
Representative Frank J. Pistella  
Representative Carole A. Rubley  
Representative Jere W. Schuler  
\* Representative Katharine M. Watson

## ADVISORY COMMITTEE ON DOMESTIC RELATIONS LAW

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The following is a roster of the current and former members of the Advisory Committee since its inception, with current members indicated with an asterisk.

\* The Honorable Emanuel A. Bertin  
(Chair)

- |  |                                    |
|--|------------------------------------|
| * The Honorable Phyllis W. Beck            | * John C. Howett, Jr., Esquire     |
| * Ann L. Begler, Esquire                   | * Steven S. Hurvitz, Esquire       |
| * The Honorable Alan M. Black              | * The Honorable Lawrence W. Kaplan |
| * Maria P. Cognetti, Esquire               | * Mary Ann Kirkpatrick, Esquire    |
| Frederick Cohen, Esquire                   | * David L. Ladov, Esquire          |
| * Mark B. Dischell, Esquire                | * Carol M. Lauchmen, Esquire       |
| * Mary Cushing Doherty, Esquire            | Benjamin H. Linton, III, Esquire   |
| * Leonard Dubin, Esquire                   | * Catherine M. McFadden, Esquire   |
| Peggy Lynn Ferber, Esquire                 | * Sandra L. Meilton, Esquire       |
| * The Honorable Idee C. Fox                | * Patricia G. Miller, Esquire      |
| * Frederick N. Frank, Esquire              | * Albert Momjian, Esquire          |
| * Lynne Z. Gold-Bikin, Esquire             | * John R. Mondschein, Esquire      |
| * Stephanie A. Gonzalez Ferrandez, Esquire | * Professor Robert Rains           |
| * Harry J. Gruener, Esquire                | * Robert R. Raphael, Esquire       |
| * David N. Hofstein, Esquire               | * Charles C. Shainberg, Esquire    |
|  | * The Honorable Jerome A. Zaleski  |



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## **THE TASK FORCE AND ADVISORY COMMITTEE PROCESS**

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Senate Resolution No. 43 of 1993 (Printer's No. 1673) directed "the Joint State Government Commission to undertake an ongoing limited study of certain areas relating to domestic relations law."<sup>1</sup> To accomplish this purpose, the resolution created a legislative Task Force comprised of the Majority and Minority Chairs of the Senate Judiciary Committee, the Senate Aging and Youth Committee, the House Judiciary Committee and the House Aging and Youth Committee.<sup>2</sup> Senator Stewart J. Greenleaf serves as the Chair of the Task Force on Domestic Relations Law.

The resolution also created an advisory committee to assist the Task Force in the coordinated review of the Domestic Relations Code.<sup>3</sup> The Advisory Committee on Domestic Relations Law consists of attorneys, judges and a law school professor from across the Commonwealth who provide expertise and advice in formulating legislation. Judge Emanuel A. Bertin of Montgomery County serves as the Chair of the Advisory Committee.

Over the years, the Advisory Committee has formed various subcommittees to assist in reviewing specific topics and developing statutory recommendations involving the Domestic Relations Code for consideration by the Advisory Committee and the Task Force:

- Alimony<sup>4</sup>
- Custody<sup>5</sup>
- Dissolution of Marriage<sup>6</sup>
- Property Rights<sup>7</sup>

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<sup>1</sup> *Infra* pp. 217-218. The resolution, adopted February 1, 1994, specifically provided "that the Joint State Government Commission shall not have power under this resolution to investigate or study areas of domestic relations law relating to child abuse and adoption."

<sup>2</sup> The House Aging and Youth Committee was subsequently separated into the House Aging and Older Adult Services Committee and the House Children and Youth Committee. The Majority and Minority Chairs of the House Children and Youth Committee became members of the Task Force.

<sup>3</sup> Title 23 of the Pennsylvania Consolidated Statutes (23 Pa.C.S.).

<sup>4</sup> Chaired by both Ann L. Begler, Esquire and Mary Cushing Doherty, Esquire.

<sup>5</sup> Chaired by Maria P. Cognetti, Esquire.

<sup>6</sup> Chaired by Frederick N. Frank, Esquire.

<sup>7</sup> Chaired by John C. Howett, Jr., Esquire.

After reaching consensus<sup>8</sup> on proposed legislation, the Advisory Committee presents to the Task Force a draft report containing the legislation and any comments to the legislation, developed by the Joint State Government Commission and the Advisory Committee.<sup>9</sup>

Ultimately, the Task Force authorizes the publication of the report,<sup>10</sup> and the legislation is finalized for introduction.<sup>11</sup>

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<sup>8</sup> Consensus does not necessarily reflect unanimity among the Advisory Committee members on each individual legislative recommendation. However, it does reflect the views of a substantial majority of the Advisory Committee, gained after lengthy review and discussion.

<sup>9</sup> Such comments become the official comments to the legislation, which may be used in determining the intent of the General Assembly. 1 Pa.C.S. § 1939 (“The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly”).

<sup>10</sup> The authorization to publish a report and prepare the legislation for introduction does not necessarily reflect the endorsement of the recommendations by the Task Force.

<sup>11</sup> Proposed additions to the statutory language are underlined; proposed deletions are bracketed.

## ADVISORY COMMITTEE REPORTS

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The Joint State Government Commission published three reports of the Advisory Committee, each of which contains proposed amendments to the Domestic Relations Code:

- *Divorce Code: Recommended Amendments* (April 1999)
- *Custody: Recommendations* (November 1999)
- *Alimony: Proposed Amendments to Title 23 of the Pennsylvania Consolidated Statutes* (December 2007)

### *Divorce Code*

In the April 1999 Divorce Code report, the Advisory Committee recommended legislation regarding the following:

- The clarification of the definition of “separate and apart.”
- The enforceability of premarital agreements, including a provision that agreements are void if executed within 60 days of the marriage.
- A one-year separation period as a ground for divorce.
- The repeal of § 3323(c) in favor of new provisions that reject automatic bifurcation, provide for bifurcation with the consent of both parties, and permit bifurcation only under limited circumstances in the absence of consent.
- The repeal of § 3323(d) in favor of new provisions specifying that under certain circumstances a divorce action does not abate upon the death of a party and that the parties’ economic rights and obligations are determined under equitable distribution principles and not under the elective share provisions of the Probate, Estates and Fiduciaries Code.<sup>12</sup>

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<sup>12</sup> Title 20 of the Pennsylvania Consolidated Statutes (20 Pa.C.S.).

- The clarification of how and when to measure and determine the increase in value of nonmarital property.
- The addition of a provision that ensures that only the net increase in value of a party's nonmarital property is considered part of the marital estate.
- The addition of a new provision to reverse certain case law,<sup>13</sup> adopt a coverture fraction methodology<sup>14</sup> and include all post-separation enhancements, except for post-separation monetary contributions by the employee spouse, in the value of a defined benefit pension.
- Specific authorization for courts to consider each marital asset independently in equitable distribution and, in appropriate cases, apply a different percentage to each marital asset.
- The clarification that tax ramifications need not be immediate and certain to be considered in making an equitable distribution award.
- The addition of a new provision specifying that the expenses of sale, transfer or liquidation associated with a particular asset may be considered in making an equitable distribution award.
- The authorization of interim equitable distribution awards.
- The increase of the threshold amount (from \$500 to \$1,000) for when a party may petition the court for the creation of a constructive trust for undisclosed assets.
- The repeal of 23 Pa.C.S. Chapter 37 in favor of a new statutory framework for alimony, to provide more certainty and predictability through presumptive guidelines for the amount and duration of alimony, including provisions regarding the following:
  - Credit against an alimony award for alimony pendente lite and spousal support previously paid.
  - The consideration of the effect of marital misconduct prior to final separation on the post-separation economic circumstances of the parties.
  - The modification and termination of an alimony award.

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<sup>13</sup> *Berrington v. Berrington*, 633 A.2d 589 (Pa. 1993).

<sup>14</sup> *See Holland v. Holland*, 581 A.2d 58 (Pa. Super. Ct. 1991).

- The effect of cohabitation on an alimony award.<sup>15</sup>
- Alimony pendente lite.
- Health and hospitalization insurance pendente lite.
- Attorney fees and expenses pendente lite.

### *Custody*

In the November 1999 Custody report, the Advisory Committee recommended the following amendments to the Domestic Relations Code:

- The repeal of 23 Pa.C.S. §§ 5301-5314,<sup>16</sup> to be replaced with a new statutory framework for custody under 23 Pa.C.S. §§ 5321-5339.
- The repeal of the Uniform Child Custody Jurisdiction Act (UCCJA),<sup>17</sup> to be replaced by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).<sup>18</sup>

The custody provisions under proposed 23 Pa.C.S. §§ 5321-5339 included the following:

- New definitions for abuse, adult, agency, parental duties, primary physical custody, relocation, shared legal custody, shared physical custody, sole legal custody, sole physical custody, and supervised visitation.
- Clarification of the definitions for child, legal custody, partial physical custody, and visitation, along with retention of the definition of physical custody.
- Specification of the types of custody and visitation that a court may award.
- The mandate that a custody or visitation order contain sufficient detail for a party to enforce it through law enforcement authorities.

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<sup>15</sup> The Advisory Committee recommended that cohabitation should not be an automatic bar to alimony.

<sup>16</sup> Subchapter A of Chapter 53 of 23 Pa.C.S.

<sup>17</sup> Subchapter B of Chapter 53 of 23 Pa.C.S.

<sup>18</sup> Proposed new Chapter 54 of 23 Pa.C.S.

- A provision that a party who willfully fails to comply with any custody or visitation order may be adjudged in contempt.
- A provision permitting parties living separate and apart in the same residence to seek a custody or visitation order, which would only be effective upon either party physically vacating the residence or the court awarding one party exclusive possession of the residence.
- Standing for a parent, an adult caring for a child at risk, an adult residing with a child for at least twelve consecutive months, and an adult caring for a child after parental relinquishment to participate in any custody or visitation action.
- The expansion of standing to seek partial physical custody or visitation to include not just grandparents and great-grandparents, but any adult related to the child, where the parent is deceased.
- Standing for a grandparent or great-grandparent to participate in an action for partial physical custody or visitation, where the parents are separated or divorced or the child resided with the grandparent or great-grandparent and was subsequently removed by a parent.
- Presumptions in cases concerning primary physical custody between parents, between a parent and a third party, and between two third parties.
- Factors to determine the best interest of the child.
- Required consideration of certain criminal convictions of a party and member of that party's household.
- A combination of the list of criminal offenses set forth in former § 5303(b) and (b.1).
- Expansion of the list of criminal offenses to include driving under the influence of alcohol or controlled substances and certain violations of The Controlled Substance, Drug, Device and Cosmetic Act.<sup>19</sup>
- Retention of the provision regarding an award when one parent is convicted of murdering the other parent.
- Clarification of the evaluation process for counseling.

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<sup>19</sup> Act of April 14, 1972 (P.L.233, No.64).

- Provisions specifying that a court may order a party to pay all or part of the costs of the counseling, evaluations, information programs, and appointment of a guardian ad litem or counsel for the child.
- Retention of the provision regarding consideration of criminal charges.
- The prohibition of a court to base a custody or visitation order exclusively on certain factors.
- The required submission of parenting plans by the parties.
- The parties' attendance at informational programs concerning parental duties.
- Counseling as part of a custody or visitation order.
- The appointment of a guardian ad litem for a child.
- The appointment of counsel for a child.
- A clarification of how records and information may be accessed and what constitutes confidential information.
- The modification of a custody or visitation order based on the standard of "best interest of the child."
- The court's award of reasonable interim or final counsel fees, costs and expenses, based on a consideration of relevant factors, including good faith, financial resources, the need to engage experts, and the best interest of the child.
- A statutory framework for relocation cases, including provisions regarding the following:
  - The requirement that a relocation may properly occur only if all individuals with custody or visitation rights to the child consent or the court approves the relocation.
  - How a party must give reasonable notice of a relocation.
  - How a party may object to a proposed relocation.
  - How a party may confirm a relocation with the court.
  - An expedited full hearing on the relocation.

- Required consideration of certain factors in determining whether to grant a proposed relocation.
- The burden of proof in relocation cases.
- Consequences when a party fails to give reasonable notice of a relocation.
- The effect of a relocation which occurs prior to a full expedited hearing.

### *Alimony*

In the December 2007 Alimony report, the Advisory Committee recommended the repeal of §§ 3701 (alimony), 3706 (bar to alimony) and 3707 (effect of death of either party) and the replacement of those provisions with a new section concerning alimony.<sup>20</sup>

The alimony provisions under proposed 23 Pa.C.S. § 3701.2 included the following:

- Court consideration of an award of alimony at the request of a party and upon a determination that the petitioner has unfunded needs and the respondent has excess income.
- Factors to determine the amount of a party's respective unfunded needs and excess income.
- A provision that the amount of an alimony award is equal to the least of the amount of the petitioner's unfunded needs, the amount of the respondent's excess income, or an amount equal to the spousal support determined under the Pennsylvania Support Guidelines.
- Court discretion to consider awarding one year of alimony for every three years of marriage prior to final separation.
- Factors to determine the duration of an alimony award.
- Court consideration of an indefinite award of alimony if the marriage was of a duration of 20 or more years prior to final separation or if the obligee (1) is the primary custodian or caretaker of and is providing care for an unemancipated child of the parties (where the child suffers

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<sup>20</sup> The proposed legislation included definitions for the following terms: cohabitation, compensatory alimony, excess income, reasonable needs, reimbursement alimony, and unfunded needs.

from a serious physical or mental disability) and (2) lacks sufficient income or earning capacity and separate and marital property to pay reasonable living expenses, including the cost of medical treatment for the child.

- Court discretion to modify or terminate an award of alimony with an indefinite term, upon a material change in circumstances of either party of a substantial and continuing nature.
- Court discretion to award either compensatory alimony or reimbursement alimony, or both.
- The need for the court to set forth the reasons for its denial or award of alimony and the amount and duration of the award, with specific reference to the relevant factors and circumstances.
- Court discretion to modify, suspend, or reinstitute an award of alimony, or make a new award of alimony, based on a material change in circumstances of either party of a substantial and continuing nature.
- Court discretion to modify an alimony award with an indefinite term and set a definite term.
- A prohibition against the court granting a petition to modify the duration of an alimony award that has a definite term.
- A provision that unless otherwise indicated in an agreement between the parties, an award of alimony terminates when the obligee remarries, the obligee enters into cohabitation, the obligee dies, or the obligor dies (unless otherwise indicated in the prior order of court).
- An award of compensatory alimony or reimbursement alimony that does not terminate upon the remarriage or cohabitation of the obligee but may terminate upon the death of either party.
- In cases where an obligor has paid alimony to an obligee after an alimony termination event, court discretion to order the obligee to reimburse the obligor the amount of alimony paid after the alimony termination event.
- A provision that whenever the parties enter into a written agreement for the payment of alimony, the agreement constitutes an order of the court for enforcement purposes only, and absent a specific provision to the contrary, an agreement for the payment of alimony is not subject to modification.



## ENACTMENTS AND PROPOSED LEGISLATION

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### *Summary*

The recommendations published in the three Joint State Government Commission reports resulted in legislation that was introduced, re-introduced or enacted throughout the succeeding legislative sessions. The legislation may represent a modified version of the Advisory Committee's recommendations. Bills moving through the legislative process may have been amended, resulting in a new printer's number.

The following chart summarizes the legislation that was based, in whole or in part, on the Advisory Committee's recommendations.

Legislative Session	Bill	Subject Matter	Enactment
2001-2002	Senate Bill No. 1084 <sup>21</sup>	Divorce and Equitable Distribution	
	Senate Bill No. 1260 <sup>22</sup>	Custody	
2003-2004	House Bill No. 2083 <sup>23</sup>	Custody	Act of June 15, 2004 (P.L.236, No.39) <sup>24</sup>
	Senate Bill No. 95 <sup>25</sup>	Divorce and Equitable Distribution	Act of November 29, 2004 (P.L.1357, No.175) <sup>26</sup>
	Senate Bill No. 275 <sup>27</sup>	Custody	
2005-2006	Senate Bill No. 74 <sup>28</sup>	Custody	
	Senate Bill No. 124 <sup>29</sup>	Equitable Distribution	Act of June 15, 2005 (P.L.7, No.4) <sup>30</sup>
2007-2008	Senate Bill No. 74 <sup>31</sup>	Custody	
	Senate Bill No. 1520 <sup>32</sup>	Alimony	

<sup>21</sup> Printer's No. 1366.

<sup>22</sup> Printer's Nos. 1651, 2230 & 2383.

<sup>23</sup> Printer's No. 2773.

<sup>24</sup> Effective August 16, 2004. *Infra* pp. 31-83.

<sup>25</sup> Printer's Nos. 94, 821, 1847 & 1939.

<sup>26</sup> Effective January 28, 2005. *Infra* pp. 85-96.

<sup>27</sup> Printer's Nos. 275 & 465.

<sup>28</sup> Printer's Nos. 64, 1108, 1150 & 1951.

<sup>29</sup> Printer's Nos. 107 & 703.

<sup>30</sup> Corrective amendment, effective immediately. *Infra* p. 97.

<sup>31</sup> Printer's No. 103.

<sup>32</sup> Printer's No. 2290.

Legislative Session	Bill	Subject Matter	Enactment
2009-2010	House Bill No. 1639 <sup>33</sup>	Custody	Act of November 23, 2010 (P.L.1106, No.112) <sup>34</sup>
	Senate Bill No. 49 <sup>35</sup>	Alimony	
	Senate Bill No. 943 <sup>36</sup>	Alimony	

### *Divorce and Equitable Distribution Legislation*

#### *2001 Senate Bill No. 1084*

2001 Senate Bill No. 1084 (Printer's No. 1366)<sup>37</sup> included the proposed statutory amendments regarding divorce and equitable distribution recommended by the Advisory Committee in its April 1999 report.<sup>38</sup> On October 9, 2001, the bill was referred to the Senate Judiciary Committee, but no further legislative action on the bill was taken.

#### *2003 Senate Bill No. 95*

The provisions of 2001 Senate Bill No. 1084 were re-introduced as 2003 Senate Bill No. 95 (Printer's No. 94)<sup>39</sup> and referred to the Senate Judiciary Committee on January 29, 2003. On May 6, 2003, the bill was reported as amended and received first consideration. As amended, 2003 Senate Bill No. 95 (Printer's No. 821)<sup>40</sup> retained the current two-year "separate and apart" requirement, thereby eliminating all references to a one-year period.

On June 4, 2003, the bill received second consideration, and on June 11, 2003, it received third consideration and was approved by the Senate by a vote of 49-0.

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<sup>33</sup> Printer's Nos. 2037, 3705, 3884, 4280 & 4468.

<sup>34</sup> Effective January 24, 2011. *Infra* pp. 99-124.

<sup>35</sup> Printer's No. 34.

<sup>36</sup> Printer's No. 1128.

<sup>37</sup> *Infra* pp. 127-133.

<sup>38</sup> Extensive applicability and effective date provisions, which were not contained in the April 1999 report, were added to the bill prior to its introduction. This Senate bill did not include the Advisory Committee's proposed amendments regarding alimony, which were also contained in the April 1999 report.

<sup>39</sup> 2003 Senate Bill No. 95 (Printer's No. 94) was identical to the bill introduced in the previous legislative session except for the deletion of the modifier "nonmarital" in § 3501(a)(3): "However, marital property does not include: . . . (3) Property acquired by gift, except between spouses, bequest, devise or descent or property acquired in exchange for such nonmarital property."

<sup>40</sup> The provisions changed from the previous version of the bill are set forth *infra* pp. 135-136.

Referred to the House Judiciary Committee (June 16, 2003), the bill was reported as amended and received first consideration on September 29, 2004. As amended, 2003 Senate Bill No. 95 (Printer's No. 1847) deleted the following provision regarding void agreements: "A premarital agreement executed within 60 days prior to the marriage shall be void. A waiver of this subsection shall be unenforceable."

On October 5, 2004, the bill received second consideration and was referred the House Appropriations Committee, where it was re-reported as committed on November 8, 2004. However, it was subsequently re-referred to the House Appropriations Committee and finally re-reported as amended on November 15, 2004.

As further amended, 2003 Senate Bill No. 95 (Printer's No. 1939):<sup>41</sup>

- Amended § 2203 of the Probate, Estates and Fiduciaries Code to highlight the amendment of 23 Pa.C.S. § 3323(d.1) and specify that 20 Pa.C.S. § 2203 does not apply if a married individual domiciled in Pennsylvania dies during the course of divorce proceedings, no decree of divorce has been entered, and grounds have been established.<sup>42</sup>
- Amended the definition of "premarital agreement."
- Retained the provision regarding substitution for a deceased party.<sup>43</sup>
- Amended the applicability and effective date provisions.

On November 19, 2004, the bill received third consideration, was approved by the House by a vote of 196-0, and was referred to the Senate Rules and Executive Nominations Committee. On November 20, 2004, the bill was re-reported on concurrence, as committed, and the Senate concurred in the House amendments by a vote of 47-0.

On November 29, 2004, the bill was approved by the Governor and became Act No. 175 of 2004. The act amends the Domestic Relations Code by amending the definitions of "separate and apart" and "marital property"; adding new sections regarding premarital agreements, the measurement and determination of the increase in value of nonmarital property, and defined benefit retirement plans; and amending provisions regarding bifurcation, the death of a party, when grounds are established, the equitable division of marital property, constructive trusts for undisclosed assets, and the statement of reasons for distribution. In addition, the act amends § 2203 (right of election; resident decedent) of the Probate, Estates and Fiduciaries Code.

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<sup>41</sup> The provisions changed from the previous version of the bill are set forth *infra* pp. 137-140.

<sup>42</sup> 23 Pa.C.S. § 3323(d.1) provides that in such cases, the parties' economic rights and obligations arising under the marriage will be determined under the Domestic Relations Code rather than under the Probate, Estates and Fiduciaries Code.

<sup>43</sup> The previous versions of the bill repealed this provision (§ 3323(d)).

The act differs from the Advisory Committee's recommendations in several ways. For example, the act amends 20 Pa.C.S. § 2203, deletes the provision that a premarital agreement executed within 60 days prior to the marriage is void and that any waiver of such is unenforceable, retains the two-year "separate and apart" period and does not adopt a one-year period, and does not delete the provision regarding substitution for a deceased party.

### *2005 Senate Bill No. 124*

2005 Senate Bill No. 124 (Printer's Nos. 107) was introduced to correct an applicability provision in Act No. 175 of 2004. The bill specified the following:

- The provisions of 23 Pa.C.S. § 3501(c) apply to all equitable distribution proceedings pending on or after January 28, 2005.<sup>44</sup>
- Section 5(7) of Act No. 175 of 2004 is repealed.<sup>45</sup>

Referred to the Senate Judiciary Committee (February 1, 2005), the bill was reported as committed and received first consideration (February 8, 2005) and subsequently received second consideration (March 14, 2005). On April 18, 2005, it was amended on third consideration<sup>46</sup> and was approved by the Senate by a vote of 47-0.

In the House, the bill was referred to the House Judiciary Committee (April 26, 2005). The bill was then reported as committed and received first consideration (May 3, 2005), received second consideration (May 10, 2005), and was re-referred to the House Appropriations Committee (May 10, 2005). On June 6, 2005, the bill was re-reported as committed, received third consideration, and was approved by the House by a vote of 194-0.

On June 15, 2005, the bill was approved by the Governor and became Act No. 4 of 2005.<sup>47</sup>

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<sup>44</sup> January 28, 2005 was the effective date of Act No. 175 of 2004, as provided in enacted 2003 Senate Bill No. 95 (Section 6 provided that the act would take effect in 60 days, and the Governor signed the bill into law on November 29, 2004).

<sup>45</sup> That provision specified that "[t]he amendment of 23 Pa.C.S. § 3501(c) shall apply to all equitable distribution proceedings commenced on or after the effective date of this paragraph."

<sup>46</sup> The date of January 28, 2005 was replaced by "the effective date of this section" (which would be immediately, according to Section 3 of the legislation).

<sup>47</sup> *Infra* p. 97.

## *Custody Legislation*

### *2002 Senate Bill No. 1260*

2002 Senate Bill No. 1260 (Printer's No. 1651)<sup>48</sup> included the proposed statutory amendments regarding custody recommended by the Advisory Committee in its November 1999 report. On January 10, 2002, the bill was referred to the Senate Judiciary Committee, and on May 6, 2002, a public hearing was held on the bill. On September 24, 2002, the bill was reported as amended from the Senate Judiciary Committee and received first consideration.

As amended in the Senate Judiciary Committee, 2002 Senate Bill No. 1260 (Printer's No. 2230)<sup>49</sup> changed the original bill in several ways:

- The title of 23 Pa.C.S. Chapter 53 was changed from “Custody Generally” to “Child Custody.”
- The modifier “child” was added to the scope of the chapter: “This chapter applies to disputes relating to *child* custody and visitation matters.”
- The requirements regarding standing for any form of physical custody, legal custody or visitation were changed and involved any person standing in loco parentis to the child, an adult assuming parental duties on behalf of the child, an adult assuming or willing to assume responsibility for the child, the child's parents who were separated for a specified period, and a grandparent assuming responsibility for a child determined to be dependent under the Juvenile Act.
- The requirements regarding standing for partial physical custody and visitation were changed and involved an adult related to the child by blood, adoption, or marriage, where a parent of the child was deceased.
- The modifiers “physical, emotional or psychological” were added to the phrase “harm to the child” when describing the risk posed by an offending individual.

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<sup>48</sup> *Infra* pp. 143-154. Although the bill contained a statutory framework for custody under 23 Pa.C.S. §§ 5321-5339 and the UCCJEA under 23 Pa.C.S. Chapter 54, only proposed §§ 5321-5339 are replicated *infra* pp. 143-154. The UCCJEA provisions contained in the bill are replicated *infra* pp. 31-83, since they were enacted as Act No. 39 of 2004.

<sup>49</sup> The provisions changed from the previous version of the bill are set forth *infra* pp. 155-157.

- A section heading was changed from “Factors not to consider when awarding custody” to “Factors upon which custody order may not be based,” and “national origin” and “gender” were added to the list of factors.
- The qualifier “of the child” was added to the provisions regarding allegations of abuse.

On November 18, 2002, the bill was amended on second consideration, but no further legislative action on the bill was taken. As amended on second consideration, 2002 Senate Bill No. 1260 (Printer’s No. 2383)<sup>50</sup> changed the previous version of the bill in several ways:

- The section regarding standing for any form of physical custody, legal custody or visitation was re-written.
- The section regarding standing for partial physical custody and visitation was re-written.
- The provision regarding the effect of adoption was re-written.
- The provisions regarding grandparents and great-grandparents were re-written.
- The section regarding factors upon which a custody or visitation order may not be based was eliminated.

### *2003 Senate Bill No. 275*

The provisions of 2002 Senate Bill No. 1260 (Printer’s No. 2383) were reintroduced as 2003 Senate Bill No. 275 (Printer’s No. 275), with only a few changes to proposed §§ 5324 and 5325 regarding standing.<sup>51</sup> On February 10, 2003, the bill was referred to the Senate Judiciary Committee. On March 11, 2003, it was reported as amended and received first consideration, but no further legislative action on the bill was taken.

As amended in the Senate Judiciary Committee, 2003 Senate Bill No. 275 (Printer’s No. 465) differed from the previous version of the bill only with respect to § 5329(a) (consideration of criminal conviction), where the reference to 18 Pa.C.S. § 2709(b) (harassment and stalking) was changed to 18 Pa.C.S. § 2709.1 (stalking).

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<sup>50</sup> The provisions changed from the previous version of the bill are set forth *infra* pp. 159-162.

<sup>51</sup> The provisions changed from 2002 Senate Bill No. 1260 (Printer’s No. 2383) are set forth *infra* p. 163.

*2003 House Bill No. 2083*

2003 House Bill No. 2083 (Printer's No. 2773) repealed the UCCJA and contained the provisions of the UCCJEA, along with conforming amendments to 23 Pa.C.S. §§ 5310 and 5612.<sup>52</sup> The framework of the UCCJEA within 23 Pa.C.S. is as follows:

Chapter 54: Uniform Child Custody Jurisdiction and Enforcement

Subchapter A: General Provisions

- 5401. Short title of chapter.
- 5402. Definitions.
- 5403. Proceedings governed by other law.
- 5404. Application to Native American tribes.
- 5405. International application of chapter.
- 5406. Effect of child custody determination.
- 5407. Priority.
- 5408. Notice to persons outside Commonwealth.
- 5409. Appearance and limited immunity.
- 5410. Communication between courts.
- 5411. Taking testimony in another state.
- 5412. Cooperation between courts; preservation of records.

Subchapter B: Jurisdiction

- 5421. Initial child custody jurisdiction.
- 5422. Exclusive, continuing jurisdiction.
- 5423. Jurisdiction to modify determination.
- 5424. Temporary emergency jurisdiction.
- 5425. Notice; opportunity to be heard; joinder.
- 5426. Simultaneous proceedings.
- 5427. Inconvenient forum.
- 5428. Jurisdiction declined by reason of conduct.
- 5429. Information to be submitted to court.
- 5430. Appearance of parties and child.

Subchapter C: Enforcement

- 5441. Definitions.
- 5442. Enforcement under Hague Convention.
- 5443. Duty to enforce.
- 5444. Temporary visitation.
- 5445. Registration of child custody determination.
- 5446. Enforcement of registered determination.

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<sup>52</sup> This bill contains the same provisions as those initially introduced in 2002 Senate Bill No. 1260 (Printer's No. 1651), with only a few technical changes and conforming amendments regarding cross-referenced provisions.

- 5447. Simultaneous proceedings.
- 5448. Expedited enforcement of child custody determination.
- 5449. Service of petition and order.
- 5450. Hearing and order.
- 5451. Warrant to take physical custody of child.
- 5452. Costs, fees and expenses.
- 5453. Recognition and enforcement.
- 5454. Appeals.
- 5455. Role of prosecutor or public official.
- 5456. Role of law enforcement.
- 5457. Costs and expenses.

Subchapter D: Intrastate Application

- 5471. Intrastate application.

Subchapter E: Miscellaneous Provisions

- 5481. Application and construction.
- 5482. Severability.

Referred to the House Judiciary Committee (October 14, 2003), the bill was reported as committed and received first consideration on October 15, 2003. On October 17, 2003, it received second consideration and was re-referred to the House Appropriations Committee, where it was re-reported as committed (November 17, 2003). On November 18, 2003, the bill received third consideration and was approved by the House by a vote of 202-0.

In the Senate, 2003 House Bill No. 2083 was referred to the Senate Judiciary Committee (November 25, 2003). On March 16, 2004, it was reported as committed and received first consideration. Re-referred to the Senate Appropriations Committee (April 13, 2004), the bill was re-reported as committed (May 10, 2004). One week later (May 17, 2004), it received second consideration. On June 7, 2004, the bill received third consideration and was approved by the Senate by a vote of 49-0.

On June 15, 2004, the bill was approved by the Governor and became Act No. 39 of 2004.<sup>53</sup>

*2005 Senate Bill No. 74*

The provisions of 2003 Senate Bill No. 275 (Printer's No. 465) were reintroduced as 2005 Senate Bill No. 74 (Printer's No. 64), with only two changes:

- The addition of a new paragraph (22) under § 5329(a) (consideration of criminal conviction), thereby providing that “[w]here a party seeks

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<sup>53</sup> *Infra* pp. 31-83.

any form of custody or visitation, the court shall consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to . . . 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs).”

- The elimination of the UCCJEA provisions, which were previously enacted as Act No. 39 of 2004.

Referred to the Senate Judiciary Committee (January 31, 2005), 2005 Senate Bill No. 74 (Printer's No. 64) was reported as committed and received first consideration on March 15, 2005. On April 11, 2005, the bill was re-referred to the Senate Appropriations Committee, where it was re-reported as amended on September 19, 2005.

As amended, Senate Bill No. 74 (Printer's No. 1108) made several technical amendments regarding cross-referenced provisions and made the following discrete amendments:

- The following italicized phrase was added to the introductory language of § 5329(a): “[w]here a party seeks any form of custody or visitation, the court shall consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any of the following offenses *or an offense in another jurisdiction equivalent to any of the following offenses:*”.
- Under § 5336(a)(1), “[a] party granted sole or shared legal custody” (instead of “[a] parent or party granted custody or visitation”) would be entitled to certain records and information.
- Under § 5336(a)(2), upon request, a parent, party or entity possessing the specified information must provide it “to any party granted sole or shared legal custody” (instead of “to any parent or party granted custody or visitation”).

On September 27, 2005, the bill was amended on second consideration. As amended, 2005 Senate Bill No. 74 (Printer's No. 1150) made several technical changes (due to changes in bill drafting conventions) and conforming amendments to the Judicial Code.<sup>54</sup> The bill also amended § 5329(a) to add a number of other offenses, with cross-references to 18 Pa.C.S. §§ 2910 (luring a child into a motor vehicle), 3129 (sexual intercourse with an animal), 4303 (concealing the death of a child), 4305 (dealing in infant children), 5903(c) and (d) (obscene and other sexual materials and performances), 6301 (corruption of minors), 6318 (unlawful contact with a minor) and 6320 (sexual exploitation of children).

On September 28, 2005, the bill received second consideration. On October 18, 2005, it received third consideration and was approved by the Senate by a vote of 49-0.

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<sup>54</sup> Title 42 of the Pennsylvania Consolidated Statutes (42 Pa.C.S.).

The bill was then referred to the House Judiciary Committee (October 19, 2005), where it was reported as amended on June 27, 2006. That same day, it received first consideration. As amended in the House Judiciary Committee, 2005 Senate Bill No. 74 (Printer's No. 1951):<sup>55</sup>

- Added a section regarding declaration of policy.
- Mandated that a court state the reasons for its decision in the custody order.
- Provided for safety conditions designed to protect the child or the abused party.
- Amended the factors to consider when awarding custody to include whether there is a continued risk of harm to the child or an abused party.
- Specified that a party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.
- Specified that in situations involving abuse, the court may order individual counseling for the abuser but may not order the parties to attend joint counseling.
- Prohibited the court from disclosing protected information regarding the address of a domestic or sexual violence victim.
- Added the following relocation factor: the present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.
- Re-wrote the section regarding the award of counsel fees, costs, and expenses to specify that a court may award reasonable interim or final counsel fees, costs, and expenses to a party if the court finds that the conduct of another party was obdurate, vexatious, repetitive, or in bad faith.

On June 28, 2006, the bill received second consideration in the House and was referred to the House Appropriations Committee. No further legislative action was taken on the bill.

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<sup>55</sup> *Infra* pp. 165-168.

### *2007 Senate Bill No. 74*

The provisions of 2005 Senate Bill No. 74 (Printer's No. 1951) were reintroduced as 2007 Senate Bill No. 74 (Printer's No. 103), with technical changes due to bill drafting conventions and with the following change: newly enacted 23 Pa.C.S. § 5315<sup>56</sup> was proposed for repeal, to be re-codified as 23 Pa.C.S. § 5340.

On February 12, 2007, the bill was referred to the Senate Judiciary Committee, but no further legislative action on the bill was taken.

### *2009 House Bill No. 1639*

The provisions of 2007 Senate Bill No. 74 (Printer's No. 103) were reintroduced as 2009 House Bill No. 1639 (Printer's No. 2037),<sup>57</sup> with several substantive changes:

- The 2009 bill recognized newly enacted 23 Pa.C.S. § 5310,<sup>58</sup> which was then proposed for repeal, to be replaced by new 23 Pa.C.S. § 5338.
- The declaration of policy was re-worded.
- The terms “supervised visitation” and “visitation” were eliminated throughout the custody provisions, and the new term “supervised physical custody” was introduced.
- The provision regarding the court’s reason for a custody award was re-worded.

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<sup>56</sup> The act of November 29, 2006 (P.L.1562, No.175) added a new section to the custody provisions: § 5315. Court-appointed child custody health care or behavioral health practitioners.

No party to a child custody matter in which the court has appointed a licensed health care or behavioral health practitioner to assist the court by conducting an examination or evaluation of the parties involved or making a recommendation concerning a child custody agreement or order may be permitted to file a complaint against the practitioner with the practitioner’s State licensing board prior to the final agreement or order being issued and for 60 days thereafter. As used in this section, “licensed health care or behavioral health practitioner” means a person who is licensed, certified, accredited or otherwise regulated by the Commonwealth to provide health care or behavioral health services.

<sup>57</sup> *Infra* pp. 169-188.

<sup>58</sup> The act of October 9, 2008 (P.L.1522, No.127) added a new section in Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes regarding deployed members of the Pennsylvania National Guard and reserve components and child custody arrangements. The act also amended 23 Pa.C.S. § 5310 to provide for an exception to the general rule by specifically cross-referencing the new section in Title 51.

- The factors to consider when awarding custody were renumbered, and additional language was added to two of the factors, indicated in italics as follows:
  - The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party *and which party can better provide adequate physical safeguards and supervision of the child.*
  - The attempts of a parent to turn the child against the other parent, *except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.*
- A provision was added to specify that the court must be gender neutral in awarding custody and that no party will receive preference based solely on gender.
- Another offense was added to the list regarding consideration of criminal convictions: an offense under 18 Pa.C.S. § 3130 (conduct relating to sex offenders).
- A provision was added to mandate that access to any records and information pertaining to the child may not be denied solely based on a parent's physical custody schedule.

On June 8, 2009, House Bill No. 1639 (Printer's No. 2037) was referred to the House Judiciary Committee. On May 4, 2010, the bill was reported as amended and received first consideration.

As amended in the House Judiciary Committee, 2009 House Bill No. 1639 (Printer's No. 3705)<sup>59</sup> made technical amendments and:

- Eliminated the declaration of policy.
- Clarified that the court must delineate the reason for its decision on the record in open court or in a written opinion *or order.*
- Specified that, in ordering any form of custody, the court must determine the best interest of the child by considering all relevant factors, *giving weighted consideration to those factors which affect the safety of the child.*

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<sup>59</sup> Certain provisions changed from the previous version of the bill are set forth *infra* pp. 189-190.

- Re-wrote the introductory language to the section regarding consideration of criminal conviction and specified that the court must determine that the party does not pose a threat of harm to the child before making an order of custody, partial custody or visitation to that party.
- Provided that the court may (not shall) require the parties to submit parenting plans for the care and custody of the child to aid the court in resolving the custody dispute.
- Specified that the court must consider the financial resources of the parties when requiring the submission of parenting plans.
- Re-wrote the provision regarding evidence by a guardian ad litem that is subject to examination.
- Specified that, in determining whether to grant a proposed relocation, the court must consider certain factors, *giving weighted consideration to those factors which affect the safety of the child.*
- Provided for mitigation regarding the failure to provide requisite reasonable notice of a proposed relocation, caused (in whole or in part) by abuse.

On May 5, 2010, 2009 House Bill No. 1639 (Printer's No. 3705) was re-committed to the House Appropriations Committee and re-reported as committed on June 9, 2010. That same day, the bill was amended on second consideration.

As amended on second consideration, 2009 House Bill No. 1639 (Printer's No. 3884):<sup>60</sup>

- Made a conforming amendment to the section regarding consideration of criminal conviction by eliminating the phrase "an order of custody, partial physical custody or visitation" and replacing it with "any order of custody."
- Eliminated the requirement that the court consider the financial resources of the parties when requiring parenting plans.
- Added a model form for the parties' proposed parenting plan.
- Re-wrote the provisions regarding a guardian ad litem.

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<sup>60</sup> The provisions changed from the previous version of the bill are set forth *infra* pp. 191-200.

- Specified that if a child has legal counsel and a guardian ad litem, counsel must represent the legal interests of the child, and the guardian ad litem must represent the best interests of the child.
- Specified how notice of a proposed relocation must be sent.
- Added the following to the required information to be included with the notice of a proposed relocation:
  - The names and ages of the individuals in the new residence, including individuals who intend to live in the new residence.
  - A counter-affidavit which can be used to object to the proposed relocation or the modification of a custody order.
- Added provisions regarding how to object to a proposed relocation or modification of a custody order.
- Added a model form for the counter-affidavit regarding relocation.
- Added more specificity regarding confirmation of a relocation and the modification of a custody order.

On June 14, 2010, the bill received third consideration and was approved by the House by a vote of 191-0. The next day, the bill was referred to the Senate Judiciary Committee.

On September 21, 2010, the bill was reported as amended from the Senate Judiciary Committee and received first consideration.

As amended, 2009 House Bill No. 1639 (Printer's No. 4280):<sup>61</sup>

- Specified that, in other statutory provisions, the term “visitation” used in reference to child custody may be construed to mean partial physical custody, shared physical custody, or supervised physical custody.
- Re-wrote the provision regarding how a party may not receive preference based on gender with respect to a custody award.
- Made technical changes to the provisions regarding a guardian ad litem and an objection to a proposed relocation.

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<sup>61</sup> The provisions changed from the previous version of the bill are set forth *infra* pp. 201-203.

- Eliminated the provision that the court must determine whether a hearing should occur expeditiously prior to the relocation of a child or whether it can be held at a date following relocation.
- Re-wrote the provisions regarding a relocation hearing.

On September 22, 2010, the bill received second consideration and was re-referred to the Senate Appropriations Committee, where it was re-reported as amended on October 12, 2012.

As amended by the Senate Appropriations Committee, 2009 House Bill No. 1639 (Printer's No. 4468):<sup>62</sup>

- Amended the definition of “agency.”
- Further amended the powers and duties of a guardian ad litem.

On October 13, 2010, the bill received third consideration and was approved by the Senate by a vote of 49-0. Subsequently, it was referred to the House Rules Committee, where it was reported as committed on November 15, 2010. That same day, the House concurred in the Senate amendments by a vote of 196-0.

On November 23, 2010, the bill was approved by the Governor and became Act No. 112 of 2010.<sup>63</sup> The act repeals 23 Pa.C.S. §§ 5301 through 5315, to be replaced by new §§ 5321 through 5340, which address the topics of custody awards; standing for physical custody or legal custody; standing for partial physical custody and supervised physical custody; the effect of adoption; presumptions in cases concerning primary physical custody; factors to consider when awarding custody; consideration of criminal convictions and criminal charges; parenting plans; informational programs; counseling; guardian ad litem for a child; counsel for a child; access to records and information; relocation; modification of an existing order; the award of counsel fees, costs and expenses; and court-appointed child custody health care or behavioral health practitioners. The act also repeals § 4346 (contempt for noncompliance with visitation or partial custody order), recodifies it as § 5323(g), and specifies that contempt is also punishable by the award of counsel fees and costs.

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<sup>62</sup> The provisions changed from the previous version of the bill are set forth *infra* p. 205.

<sup>63</sup> *Infra* pp. 99-124.

### *Other Custody Legislation Considered*

It should also be noted that the Advisory Committee has both formally and informally discussed the issue of joint custody, most notably as the result of the introduction of 2009 House Bill No. 463 (Printer's No. 516).<sup>64</sup>

### *Alimony Legislation*

#### *2008 Senate Bill No. 1520*

2008 Senate Bill No. 1520 (Printer's No. 2290)<sup>65</sup> included the proposed statutory amendments regarding alimony recommended by the Advisory Committee in its December 2007 report, with only the following differences:

- Section 3701.2(d)(2) in the report provided that “[t]he court may consider awarding one year of alimony for every three years of marriage prior to final separation.” The bill replaced that language with the following: “In the court’s sole discretion, it may consider the option of awarding one year of alimony for every three years of marriage prior to final separation. This provision shall not be considered a guideline for all cases.”

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<sup>64</sup> Among other things, the bill provides that an order for joint custody will be awarded by the court unless the court finds that joint custody is not in the best interest of the child. There would be a rebuttable presumption that an award of joint custody is in the best interest of the child, and the court would need to state on record the reason for any award other than an award of joint custody. The following terms would be defined:

“Joint custody.” Joint legal and physical custody. An award of joint legal and physical custody obligates the parties to exchange information concerning the health, education and welfare of the minor child, and, unless allocated, apportioned or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

“Joint legal custody.” The state in which the parents or parties share, have voluntarily allocated or the court has decreed between them, the decision-making rights, responsibilities and authority relating to the health, education and welfare of a child.

“Joint physical custody.” The state in which the court has entered an order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents or parties. Joint physical custody shall be shared by the parents in such a way as to assure a child of frequent and continuing contact with both parents.

On February 18, 2009, the bill was referred to the House Judiciary Committee, but no further legislative action on the bill was taken.

<sup>65</sup> *Infra* pp. 209-214.

- Section 3701.2(f)(1) in the report provided that the court must consider an indefinite term of alimony if the marriage was of a duration of 20 or more years prior to final separation. The bill removed this provision and specified that the paragraph concerning an indefinite term of alimony for certain obligees<sup>66</sup> was not intended to preclude a court from making an award of alimony having an indefinite term in the appropriate case under the enumerated factors for the duration of alimony.

On July 2, 2008, the bill was referred to the Senate Judiciary Committee, but no further legislative action on the bill was taken.

#### *2009 Senate Bill No. 49*

The provisions of 2008 Senate Bill No. 1520 (Printer's No. 2290) were re-introduced as 2009 Senate Bill No. 49 (Printer's No. 34)<sup>67</sup> and referred to the Senate Judiciary Committee on January 20, 2009. However, no further legislative action on the bill was taken.

#### *2009 Senate Bill No. 943*

2009 Senate Bill No. 943 (Printer's No. 1128) was also introduced during the 2009-2010 legislative session. Aside from one minor technical change regarding the modification provisions, the bill was identical to 2009 Senate Bill No. 49 (Printer's No. 34), except that the following provision was deleted from § 3701.1(d): "In the court's sole discretion, it may consider the option of awarding one year of alimony for every three years of marriage prior to final separation. This provision shall not be considered a guideline for all cases."

On June 5, 2009, the bill was referred to the Senate Judiciary Committee, but no further legislative action on the bill was taken.

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<sup>66</sup> The report and the bill both provided that the court must consider an indefinite term of alimony when the obligee (1) is the primary custodian or caretaker of and is providing care for an unemancipated child of the parties, if the child suffers from a serious physical or mental disability and (2) lacks sufficient income or earning capacity and separate and marital property to pay reasonable living expenses, including the cost of medical treatment for the child.

<sup>67</sup> 2009 Senate Bill No. 49 was identical to the bill introduced in the previous legislative session except for minor technical changes made to the applicability provisions.



## **APPENDIX 1: ENACTMENTS**

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Act of June 15, 2004 (P.L. 236, No. 39)  
*Uniform Child Custody Jurisdiction and Enforcement Act*

Act of November 29, 2004 (P.L. 1357, No. 175)  
*Divorce and Equitable Distribution*

Act of June 15, 2005 (P.L. 7, No. 4)  
*Divorce and Equitable Distribution*

Act of November 12, 2010 (P.L. 1106, No. 112)  
*Child Custody*



**DOMESTIC RELATIONS CODE (23 PA.C.S.)  
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

Act of Jun. 15, 2004, P.L. 236, No. 39  
Session of 2004  
No. 2004-39

HB 2083

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for child custody jurisdiction and enforcement.

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

**Section 1.** Section 5310 of Title 23 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5310. Modification of existing custody orders.

Any order for the custody of the child of a marriage entered by a court in this Commonwealth or any state may, subject to the jurisdictional requirements set forth in [42 Pa.C.S. §§ 5342 (relating to purposes and construction of subchapter) and 5344 (relating to jurisdiction)] Chapter 54 (relating to uniform child custody jurisdiction and enforcement), be modified at any time to an order of shared custody in accordance with this subchapter.

**Section 2.** Subchapter B of Chapter 53 of Title 23 is repealed.

**Section 3.** Title 23 is amended by adding a chapter to read:

CHAPTER 54  
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT

Subchapter

- A. General Provisions
- B. Jurisdiction
- C. Enforcement
- D. Intrastate Application
- E. Miscellaneous Provisions

SUBCHAPTER A  
GENERAL PROVISIONS

Sec.

- 5401. Short title of chapter.
- 5402. Definitions.
- 5403. Proceedings governed by other law.
- 5404. Application to Native American tribes.
- 5405. International application of chapter.
- 5406. Effect of child custody determination.
- 5407. Priority.
- 5408. Notice to persons outside Commonwealth.
- 5409. Appearance and limited immunity.
- 5410. Communication between courts.
- 5411. Taking testimony in another state.
- 5412. Cooperation between courts; preservation of records.

§ 5401. Short title of chapter.

This chapter shall be known and may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

§ 5402. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abandoned.” Left without provision for reasonable and necessary care or supervision.

“Child.” An individual who has not attained 18 years of age.

“Child custody determination.” A judgment, decree or other order of a court providing for legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

“Child custody proceeding.” A proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under Subchapter C (relating to enforcement).

“Commencement.” The filing of the first pleading in a proceeding.

“Court.” An entity authorized under the law of a state to establish, enforce or modify a child custody determination.

“Home state.” The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child six months of age or younger, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

“Initial determination.” The first child custody determination concerning a particular child.

“Issuing court.” The court that makes a child custody determination for which enforcement is sought under this chapter.

“Modification.” A child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

“Person.” An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

“Person acting as a parent.” A person, other than a parent, who:

(1) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(2) has been awarded legal custody by a court or claims a right to legal custody under the laws of this Commonwealth.

“Physical custody.” The physical care and supervision of a child.

“State.” A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

“Tribe.” A Native American tribe or band, or Alaskan Native village, which is recognized by Federal law or formally acknowledged by a state.

“Warrant.” An order issued by a court authorizing law enforcement officers to take physical custody of a child.

#### § 5403. Proceedings governed by other law.

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

#### § 5404. Application to Native American tribes.

(a) Primacy of Indian Child Welfare Act.--A child custody proceeding that pertains to a Native American child as defined in the Indian Child Welfare Act of 1978 (Public Law 95-608, 25 U.S.C. § 1901 et seq.) is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act of 1978.

(b) Tribe treated as state.--A court of this Commonwealth shall treat a tribe as if it were a state of the United States for the purpose of applying Subchapter B (relating to jurisdiction) and this subchapter.

(c) Tribal custody determinations.--A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Subchapter C (relating to enforcement).

#### § 5405. International application of chapter.

(a) Foreign country treated as state.--A court of this Commonwealth shall treat a foreign country as if it were a state of the United States for the purpose of applying Subchapter B (relating to jurisdiction) and this subchapter.

(b) Foreign custody determinations.--Except as otherwise provided in subsection (c), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Subchapter C (relating to enforcement).

(c) Violation of human rights.--A court of this Commonwealth need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

§ 5406. Effect of child custody determination.

A child custody determination made by a court of this Commonwealth that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this Commonwealth or notified in accordance with section 5408 (relating to notice to persons outside Commonwealth) or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

§ 5407. Priority.

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

§ 5408. Notice to persons outside Commonwealth.

(a) General rule.--Notice required for the exercise of jurisdiction when a person is outside this Commonwealth may be given in a manner prescribed by the laws of this Commonwealth for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service.--Proof of service may be made in the manner prescribed by the laws of this Commonwealth or by the law of the state in which the service is made.

(c) Submission to jurisdiction.--Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

§ 5409. Appearance and limited immunity.

(a) General rule.--A party to a child custody proceeding, including a modification proceeding or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this Commonwealth for another proceeding or purpose solely by reason of having participated or of having been physically present for the purpose of participating in the proceeding.

(b) Service.--A person who is subject to personal jurisdiction in this Commonwealth on a basis other than physical presence is not immune from service of process in this Commonwealth. A party present in this Commonwealth who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) Acts committed while in this Commonwealth.--The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the

participation in a proceeding under this chapter committed by an individual while present in this Commonwealth.

§ 5410. Communication between courts.

(a) General rule.--A court of this Commonwealth may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) Participation of parties.--The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Matters of cooperation between courts.--Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Record.--Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) Definition.--As used in this section, the term "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 5411. Taking testimony in another state.

(a) General rule.--In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this Commonwealth for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) Means and location.--A court of this Commonwealth may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this Commonwealth shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Transmission of documentary evidence.--Documentary evidence transmitted from another state to a court of this Commonwealth by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§ 5412. Cooperation between courts; preservation of records.

(a) Assistance of another state.--A court of this Commonwealth may request the appropriate court of another state to:

- (1) hold an evidentiary hearing;
- (2) order a person to produce or give evidence pursuant to procedures of that state;
- (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this Commonwealth a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and

(5) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Assistance to another state.--Upon request of a court of another state, a court of this Commonwealth may hold a hearing, enter an order or forward transcripts, evidence and evaluations described in subsection (a).

(c) Expenses.--Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the laws of this Commonwealth.

(d) Preservation of records.--A court of this Commonwealth shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

## SUBCHAPTER B JURISDICTION

Sec.

5421. Initial child custody jurisdiction.

5422. Exclusive, continuing jurisdiction.

5423. Jurisdiction to modify determination.

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5425. Notice; opportunity to be heard; joinder.

5426. Simultaneous proceedings.

5427. Inconvenient forum.

5428. Jurisdiction declined by reason of conduct.

5429. Information to be submitted to court.

5430. Appearance of parties and child.

§ 5421. Initial child custody jurisdiction.

(a) General rule.--Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

(1) this Commonwealth is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;

(2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under section 5427 (relating to inconvenient forum) or 5428 (relating to jurisdiction declined by reason of conduct) and:

- (i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence; and
  - (ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training and personal relationships;
  - (3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under section 5427 or 5428; or
  - (4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).
- (b) Exclusive jurisdictional basis.--Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this Commonwealth.
- (c) Physical presence and personal jurisdiction unnecessary.--Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

§ 5422. Exclusive, continuing jurisdiction.

(a) General rule.--Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth which has made a child custody determination consistent with section 5421 (relating to initial child custody jurisdiction) or 5423 (relating to jurisdiction to modify determination) has exclusive, continuing jurisdiction over the determination until:

- (1) a court of this Commonwealth determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this Commonwealth and that substantial evidence is no longer available in this Commonwealth concerning the child's care, protection, training and personal relationships; or
- (2) a court of this Commonwealth or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this Commonwealth.

(b) Modification where court does not have exclusive, continuing jurisdiction.--A court of this Commonwealth which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 5421.

§ 5423. Jurisdiction to modify determination.

Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth may not modify a child custody determination made by a court of another state unless a court of this Commonwealth has jurisdiction to make an initial determination under section 5421(a)(1) or (2) (relating to initial child custody jurisdiction) and:

- (1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under section 5422 (relating to exclusive, continuing jurisdiction) or that a court of this Commonwealth would be a more convenient forum under section 5427 (relating to inconvenient forum); or

(2) a court of this Commonwealth or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

§ 5424. Temporary emergency jurisdiction.

(a) General rule.--A court of this Commonwealth has temporary emergency jurisdiction if the child is present in this Commonwealth and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

(b) No previous custody determination or proceeding.--If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 5421 (relating to initial child custody jurisdiction) through 5423 (relating to jurisdiction to modify determination), a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 5421 through 5423. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 5421 through 5423, a child custody determination made under this section becomes a final determination if it so provides and this Commonwealth becomes the home state of the child.

(c) Previous custody determination or proceeding.--If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 5421 through 5423, any order issued by a court of this Commonwealth under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 5421 through 5423. The order issued in this Commonwealth remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) Mandatory communication between courts.--A court of this Commonwealth which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of a state having jurisdiction under sections 5421 through 5423, shall immediately communicate with the other court. A court of this Commonwealth which is exercising jurisdiction pursuant to sections 5421 through 5423, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

§ 5425. Notice; opportunity to be heard; joinder.

(a) General rule.--Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 5408 (relating to notice to persons outside Commonwealth) must be given to all persons entitled to notice under the laws of this Commonwealth as in child custody proceedings

between residents of this Commonwealth, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

(b) Lack of notice or opportunity to be heard.--This chapter does not govern the enforceability of a child custody determination made without notice or any opportunity to be heard.

(c) Joinder and intervention.--The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the laws of this Commonwealth as in child custody proceedings between residents of this Commonwealth.

#### § 5426. Simultaneous proceedings.

(a) General rule.--Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter unless the proceeding has been terminated or is stayed by the court of the other state because a court of this Commonwealth is a more convenient forum under section 5427 (relating to inconvenient forum).

(b) Stay; communication with other court.--Except as otherwise provided in section 5424, a court of this Commonwealth, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 5429 (relating to information to be submitted to court). If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this Commonwealth shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this Commonwealth is a more appropriate forum, the court of this Commonwealth shall dismiss the proceeding.

(c) Modification.--In a proceeding to modify a child custody determination, a court of this Commonwealth shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

- (1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;
- (2) enjoin the parties from continuing with the proceeding for enforcement; or
- (3) proceed with the modification under conditions it considers appropriate.

#### § 5427. Inconvenient forum.

(a) General rule.--A court of this Commonwealth which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

(b) Factors.--Before determining whether it is an inconvenient forum, a court of this Commonwealth shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child has resided outside this Commonwealth;
- (3) the distance between the court in this Commonwealth and the court in the state that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which state should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each state with the facts and issues in the pending litigation.

(c) Stay.--If a court of this Commonwealth determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) Jurisdiction declined.--A court of this Commonwealth may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

§ 5428. Jurisdiction declined by reason of conduct.

(a) General rule.--Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction) or by other laws of this Commonwealth, if a court of this Commonwealth has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

- (1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
- (2) a court of the state otherwise having jurisdiction under sections 5421 (relating to initial child custody jurisdiction) through 5423 (relating to jurisdiction to modify determination) determines that this Commonwealth is a more appropriate forum under section 5427 (relating to inconvenient forum); or
- (3) no court of any other state would have jurisdiction under the criteria specified in sections 5421 through 5423.

(b) Jurisdiction declined; remedy.--If a court of this Commonwealth declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 5421 through 5423.

(c) Jurisdiction declined; expenses.--If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this Commonwealth unless authorized by law other than this chapter.

§ 5429. Information to be submitted to court.

(a) General rule.--Subject to the rules set forth in Chapter 53 (relating to child custody) providing for the confidentiality of procedures, addresses and other identifying information in a child custody proceeding, each party in its first pleading or in an attached affidavit shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated as a party or witness or in any other capacity in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number and the date of the child custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions, and, if so, identify the court, the case number and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of or visitation with the child and, if so, the names and addresses of those persons.

(b) Stay.--If the information required by subsection (a) is not furnished, the court upon motion of a party or its own motion may stay the proceeding until the information is furnished.

(c) Additional information.--If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Duty to disclose other proceedings.--Each party has a continuing duty to inform the court of any proceeding in this Commonwealth or any other state that could affect the current proceeding.

(e) Identifying information.--If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

§ 5430. Appearance of parties and child.

(a) General rule.--In a child custody proceeding in this Commonwealth, the court may order a party to the proceeding who is in this Commonwealth to appear before the court in person with or without the child. The court may order any person who is in this Commonwealth and who has physical custody or control of the child to appear in person with the child.

(b) Party outside this Commonwealth.--If a party to a child custody proceeding whose presence is desired by the court is outside this Commonwealth, the court may order that a notice given pursuant to section 5408 (relating to notice to persons outside Commonwealth) include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) Personal safety.--The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) Expenses.--If a party to a child custody proceeding who is outside this Commonwealth is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

SUBCHAPTER C  
ENFORCEMENT

Sec.

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§ 5441. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Petitioner.” A person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

“Respondent.” A person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

§ 5442. Enforcement under Hague Convention.

Under this subchapter a court of this Commonwealth may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

§ 5443. Duty to enforce.

(a) General rule.--A court of this Commonwealth shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) Remedies.--A court of this Commonwealth may utilize any remedy available under other laws of this Commonwealth to enforce a child custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§ 5444. Temporary visitation.

(a) General rule.--A court of this Commonwealth which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

- (1) a visitation schedule made by a court of another state; or
- (2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) Time to obtain permanent change in visitation.--If a court of this Commonwealth makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Subchapter B (relating to jurisdiction). The order remains in effect until an order is obtained from the other court or the period expires.

§ 5445. Registration of child custody determination.

(a) General rule.--A child custody determination issued by a court of another state may be registered in this Commonwealth, with or without a simultaneous request for enforcement, by sending to the appropriate court in this Commonwealth:

- (1) a letter or other document requesting registration;
- (2) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in section 5429 (relating to information to be submitted to court), the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) Duties of registering court.--On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) Notice.--The notice required by subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this Commonwealth;

(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) Contest over validity of registered order.--A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under Subchapter B (relating to jurisdiction);

(2) the child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under Subchapter B; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 5408 (relating to notice to persons outside Commonwealth), in the proceedings before the court that issued the order for which registration is sought.

(e) Failure to contest.--If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Res judicata.--Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

#### § 5446. Enforcement of registered determination.

(a) General rule.--A court of this Commonwealth may grant any relief normally available under the laws of this Commonwealth to enforce a registered child custody determination made by a court of another state.

(b) Modification.--A court of this Commonwealth shall recognize and enforce but may not modify, except in accordance with Subchapter B (relating to jurisdiction), a registered child custody determination of a court of another state.

§ 5447. Simultaneous proceedings.

If a proceeding for enforcement under this subchapter is commenced in a court of this Commonwealth and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Subchapter B (relating to jurisdiction), the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§ 5448. Expedited enforcement of child custody determination.

(a) Verification.--A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) Petition.--A petition for enforcement of a child custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions, and, if so, identify the court, the case number and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials, and, if so, the relief sought; and

(6) if the child custody determination has been registered and confirmed under section 5445 (relating to registration of child custody determination), the date and place of registration.

(c) Hearing.--Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) Contest over validity of custody determination.--An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under section 5452 (relating to costs, fees and expenses) and may schedule a hearing to determine whether further relief is appropriate unless the respondent appears and establishes that:

(1) the child custody determination has not been registered and confirmed under section 5445 and that:

- (i) the issuing court did not have jurisdiction under Subchapter B (relating to jurisdiction);
  - (ii) the child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under Subchapter B; or
  - (iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 5408 (relating to notice to persons outside Commonwealth), in the proceedings before the court that issued the order for which enforcement is sought; or
- (2) the child custody determination for which enforcement is sought was registered and confirmed under section 5444 (relating to temporary visitation), but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Subchapter B.

§ 5449. Service of petition and order.

Except as otherwise provided in section 5451 (relating to warrant to take physical custody of child), the petition and order must be served by any method authorized by the laws of this Commonwealth upon respondent and any person who has physical custody of the child.

§ 5450. Hearing and order.

(a) General rule.--Unless the court issues a temporary emergency order pursuant to section 5424 (relating to temporary emergency jurisdiction), upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

- (1) the child custody determination has not been registered and confirmed under section 5445 (relating to registration of child custody determination) and that:
- (i) the issuing court did not have jurisdiction under Subchapter B (relating to jurisdiction);
  - (ii) the child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Subchapter B; or
  - (iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 5408 (relating to notice to persons outside Commonwealth), in the proceedings before the court that issued the order for which enforcement is sought; or
- (2) the child custody determination for which enforcement is sought was registered and confirmed under section 5445 but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Subchapter B.

(b) Costs, fees and expenses.--The court shall award the costs, fees and expenses authorized under section 5452 (relating to costs, fees and expenses) and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) Refusal to testify.--If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) Spousal privilege unavailable.--A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

§ 5451. Warrant to take physical custody of child.

(a) General rule.--Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this Commonwealth.

(b) Petition.--If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this Commonwealth, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 5448(b) (relating to expedited enforcement of child custody determination).

(c) Warrant.--A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) Time of service.--The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(e) Enforcement.--A warrant to take physical custody of a child is enforceable throughout this Commonwealth. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) Appearance of child.--The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

§ 5452. Costs, fees and expenses.

(a) General rule.--The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) Assessment against a state.--The court may not assess fees, costs or expenses against a state unless authorized by law other than this chapter.

§ 5453. Recognition and enforcement.

A court of this Commonwealth shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under Subchapter B (relating to jurisdiction).

§ 5454. Appeals.

An appeal may be taken from a final order in a proceeding under this subchapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 5424 (relating to temporary emergency jurisdiction), the enforcing court may not stay an order enforcing a child custody determination pending appeal.

§ 5455. Role of prosecutor or public official.

(a) General rule.--In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this subchapter or any other available civil proceeding to locate a child, obtain the return of a child or enforce a child custody determination if there is:

- (1) an existing child custody determination;
- (2) a request to do so from a court in a pending child custody proceeding;
- (3) a reasonable belief that a criminal statute has been violated; or
- (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) Authority.--A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

§ 5456. Role of law enforcement.

At the request of a prosecutor or other appropriate public official acting under section 5455 (relating to role of prosecutor or public official), a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under section 5455.

§ 5457. Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under section 5455 (relating to role of prosecutor or public official) or 5456 (relating to role of law enforcement).

SUBCHAPTER D  
INTRASTATE APPLICATION

Sec.

5471. Intra state application.

§ 5471. Intrastate application.

The provisions of this chapter allocating jurisdiction and functions between and among courts of different states shall also allocate jurisdiction and functions between and among the courts of common pleas of this Commonwealth.

SUBCHAPTER E  
MISCELLANEOUS PROVISIONS

Sec.

5481. Application and construction.

5482. Severability.

§ 5481. Application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 5482. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**Section 4.** Section 5612(c) and (f) of Title 23 are amended to read:

§ 5612. Petition for approval of a designation.

\* \* \*

(c) Jurisdiction.--For purposes of determining jurisdiction under this chapter, the provisions of [Subchapter B of Chapter 53 (relating to child custody jurisdiction)] Chapter 54 (relating to uniform child custody jurisdiction and enforcement) shall apply.

\* \* \*

(f) Hearing.--In the event a hearing is required, it shall be conducted in accordance with the proceedings set forth in [Chapter] Chapters 53 (relating to custody) and 54.

\* \* \*

**Section 5.** A proceeding under 23 Pa.C.S. Ch. 53 which was commenced before the effective date of this act is governed by the law in effect at the time the proceeding was initiated.

**Section 6.** This act shall take effect in 60 days.

APPROVED--The 15th day of June, A.D. 2004.

EDWARD G. RENDELL

**JOINT STATE GOVERNMENT COMMISSION  
COMMENTS TO ACT NO. 39 of 2004**

By recommending approval of the UCCJEA provisions, the Joint State Government Commission and the Advisory Committee on Domestic Relations Law recognized that the comments developed by the National Conference of Commissioners on Uniform State Laws would be applicable to the Pennsylvania law ultimately enacted (in this case, Act No. 39 of 2004, which resulted from 2003 House Bill No. 2083).<sup>68</sup> The uniform act comments, which were originally published in the November 1999 report, were edited consistent with the style of the Pennsylvania Statutes. Parallel Pennsylvania citations are provided in parentheses after each UCCJEA citation.

**UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT  
PREFATORY NOTE**

This Act, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), revisits the problem of the interstate child almost thirty years after the Conference promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA accomplishes two major purposes.

First, it revises the law on child custody jurisdiction in light of federal enactments and almost thirty years of inconsistent case law. Article 2 (Subchapter B) of this Act provides clearer standards for which states can exercise original jurisdiction over a child custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction. Other aspects of the article harmonize the law on simultaneous proceedings, clean hands, and forum non conveniens.

Second, this Act provides in Article 3 (Subchapter C) for a remedial process to enforce interstate child custody and visitation determinations. In doing so, it brings a uniform procedure to the law of interstate enforcement that is currently producing inconsistent results. In many respects, this Act accomplishes for custody and visitation determinations the same uniformity that has occurred in interstate child support with the promulgation of the Uniform Interstate Family Support Act (UIFSA).

**Revision of Uniform Child Custody Jurisdiction Act**

The UCCJA was adopted as law in all 50 states, the District of Columbia, and the Virgin Islands. A number of adoptions, however, significantly departed from the original text. In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the goals of the UCCJA were rendered unobtainable in many cases.

In 1980, the federal government enacted the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A, to address the interstate custody jurisdictional problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state

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<sup>68</sup> Note that “[s]tatutes uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them.” 1 Pa.C.S. § 1927.

authorities give full faith and credit to other states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements are similar to those in the UCCJA. There are, however, some significant differences. For example, the PKPA authorizes continuing exclusive jurisdiction in the original decree state so long as one parent or the child remains there and that state has continuing jurisdiction under its own law. The UCCJA did not directly address this issue. To further complicate the process, the PKPA partially incorporates state UCCJA law in its language. The relationship between these two statutes became "technical enough to delight a medieval property lawyer." Homer H. Clark, *Domestic Relations* § 12.5 at 494 (2d ed. 1988).

As documented in an extensive study by the American Bar Association's Center on Children and the Law, *Obstacles to the Recovery and Return of Parentally Abducted Children* (1993) (*Obstacles Study*), inconsistency of interpretation of the UCCJA and the technicalities of applying the PKPA, resulted in a loss of uniformity among the states. The *Obstacles Study* suggested a number of amendments which would eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA.

The revisions of the jurisdictional aspects of the UCCJA eliminate the inconsistent state interpretations and can be summarized as follows:

**1. Home state priority.** The PKPA prioritizes "home state" jurisdiction by requiring that full faith and credit cannot be given to a child custody determination by a state that exercises initial jurisdiction as a "significant connection state" when there is a "home state." Initial custody determinations based on "significant connections" are not entitled to PKPA enforcement unless there is no home state. The UCCJA, however, specifically authorizes four independent bases of jurisdiction without prioritization. Under the UCCJA, a significant connection custody determination may have to be enforced even if it would be denied enforcement under the PKPA. The UCCJEA prioritizes home state jurisdiction in section 201 (section 5421).

**2. Clarification of emergency jurisdiction.** There are several problems with the current emergency jurisdiction provision of the UCCJA § 3(a)(3). First, the language of the UCCJA does not specify that emergency jurisdiction may be exercised only to protect the child on a temporary basis until the court with appropriate jurisdiction issues a permanent order. Some courts have interpreted the UCCJA language to so provide. Other courts, however, have held that there is no time limit on a custody determination based on emergency jurisdiction. Simultaneous proceedings and conflicting custody orders have resulted from these different interpretations.

Second, the emergency jurisdiction provisions predated the widespread enactment of state domestic violence statutes. Those statutes are often invoked to keep one parent away from the other parent and the children when there is a threat of violence. Whether these situations are sufficient to invoke the emergency jurisdiction provision of the UCCJA has been the subject of some confusion since the emergency jurisdiction provision does not specifically refer to violence directed against the parent of the child or against a sibling of the child.

The UCCJEA contains a separate section on emergency jurisdiction at section 204 (section 5424) which addresses these issues.

**3. Exclusive continuing jurisdiction for the state that entered the decree.** The failure of the UCCJA to clearly enunciate that the decree-granting state retains exclusive continuing jurisdiction to modify a decree has resulted in two major problems. First, different interpretations of the UCCJA on continuing jurisdiction have produced conflicting custody decrees. States also have different interpretations as to how long continuing jurisdiction lasts. Some courts have held that modification jurisdiction continues until the last contestant leaves the state, regardless of how many years the child has lived outside the state or how tenuous the child's connections to the state have become. Other courts have held that continuing modification jurisdiction ends as soon as the child has established a new home state, regardless of how significant the child's connections to the decree state remain. Still other states distinguish between custody orders and visitation orders. This divergence of views leads to simultaneous proceedings and conflicting custody orders.

The second problem arises when it is necessary to determine whether the state with continuing jurisdiction has relinquished it. There should be a clear basis to determine when that court has relinquished jurisdiction. The UCCJA provided no guidance on this issue. The ambiguity regarding whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it erroneously believes that the other court has declined jurisdiction. This caused simultaneous proceedings and conflicting custody orders. In addition, some courts have declined jurisdiction after only informal contact between courts with no opportunity for the parties to be heard. This raised significant due process concerns. The UCCJEA addresses these issues in sections 110, 202, and 206 (sections 5410, 5422 and 5426).

**4. Specification of what custody proceedings are covered.** The definition of custody proceeding in the UCCJA is ambiguous. States have rendered conflicting decisions regarding certain types of proceedings. There is no general agreement on whether the UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination of parental rights, and protection from domestic violence proceedings. The UCCJEA includes a sweeping definition that, with the exception of adoption, includes virtually all cases that can involve custody of or visitation with a child as a "custody determination."

**5. Role of "best interests."** The jurisdictional scheme of the UCCJA was designed to promote the best interests of the children whose custody was at issue by discouraging parental abduction and providing that, in general, the state with the closest connections to, and the most evidence regarding, a child should decide that child's custody. The "best interest" language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that "best interests" considerations should override jurisdictional determinations or provide an additional jurisdictional basis.

The UCCJEA eliminates the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.

**6. Other changes.** This draft also makes a number of additional amendments to the UCCJA. Many of these changes were made to harmonize the provisions of this Act with those of the Uniform Interstate Family Support Act. One of the policy bases underlying this Act is to make uniform the law of interstate family proceedings to the

extent possible, given the very different jurisdictional foundations. It simplifies the life of the family law practitioner when the same or similar provisions are found in both Acts.

### **Enforcement Provisions**

One of the major purposes of the revision of the UCCJA was to provide a remedy for interstate visitation and custody cases. As with child support, state borders have become one of the biggest obstacles to enforcement of custody and visitation orders. If either parent leaves the state where the custody determination was made, the other parent faces considerable difficulty in enforcing the visitation and custody provisions of the decree. Locating the child, making service of process, and preventing adverse modification in a new forum all present problems.

There is currently no uniform method of enforcing custody and visitation orders validly entered in another state. As documented by the *Obstacles Study*, despite the fact that both the UCCJA and the PKPA direct the enforcement of visitation and custody orders entered in accordance with mandated jurisdictional prerequisites and due process, neither act provides enforcement procedures or remedies.

As the *Obstacles Study* pointed out, the lack of specificity in enforcement procedures has resulted in the law of enforcement evolving differently in different jurisdictions. In one state, it might be common practice to file a Motion to Enforce or a Motion to Grant Full Faith and Credit to initiate an enforcement proceeding. In another state, a Writ of Habeas Corpus or a Citation for Contempt might be commonly used. In some states, Mandamus and Prohibition also may be utilized. All of these enforcement procedures differ from jurisdiction to jurisdiction. While many states tend to limit considerations in enforcement proceedings to whether the court which issued the decree had jurisdiction to make the custody determination, others broaden the considerations to scrutiny of whether enforcement would be in the best interests of the child.

Lack of uniformity complicates the enforcement process in several ways: (1) It increases the costs of the enforcement action in part because the services of more than one lawyer may be required--one in the original forum and one in the state where enforcement is sought; (2) It decreases the certainty of outcome; (3) It can turn enforcement into a long and drawn out procedure. A parent opposed to the provisions of a visitation determination may be able to delay implementation for many months, possibly even years, thereby frustrating not only the other parent, but also the process that led to the issuance of the original court order.

The provisions of Article 3 (Subchapter C) provide several remedies for the enforcement of a custody determination. First, there is a simple procedure for registering a custody determination in another state. This will allow a party to know in advance whether that state will recognize the party's custody determination. This is extremely important in estimating the risk of the child's non-return when the child is sent on visitation. The provision should prove to be very useful in international custody cases.

Second, the Act provides a swift remedy along the lines of habeas corpus. Time is extremely important in visitation and custody cases. If visitation rights cannot be enforced quickly, they often cannot be enforced at all. This is particularly true if there is a limited time within which visitation can be exercised such as may be the case when one parent has been granted visitation during the winter or spring holiday period. Without

speedy consideration and resolution of the enforcement of such visitation rights, the ability to visit may be lost entirely. Similarly, a custodial parent must be able to obtain prompt enforcement when the noncustodial parent refuses to return a child at the end of authorized visitation, particularly when a summer visitation extension will infringe on the school year. A swift enforcement mechanism is desirable for violations of both custody and visitation provisions.

The scope of the enforcing court's inquiry is limited to the issue of whether the decree court had jurisdiction and complied with due process in rendering the original custody decree. No further inquiry is necessary because neither Article 2 (Subchapter B) nor the PKPA allows an enforcing court to modify a custody determination.

Third, the enforcing court will be able to utilize an extraordinary remedy. If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Finally, there is a role for public authorities, such as prosecutors, in the enforcement process. Their involvement will encourage the parties to abide by the terms of the custody determination. If the parties know that public authorities and law enforcement officers are available to help in securing compliance with custody determinations, the parties may be deterred from interfering with the exercise of rights established by court order.

The involvement of public authorities will also prove more effective in remedying violations of custody determinations. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the public authorities as an enforcement agency will help ensure that this remedy can be made available regardless of income level. In addition, the public authorities may have resources to draw on that are unavailable to the average litigant.

This Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation of the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. The Act does not mandate that public authorities be involved in all cases. Not all states, or local authorities, have the funds necessary for an effective custody and visitation enforcement program.

#### Comment to § 5401

Section 1 of the UCCJA was a statement of the purposes of the Act. Although extensively cited by courts, it was eliminated because Uniform Acts no longer contain such a section. Nonetheless, this Act should be interpreted according to its purposes which are to:

- (1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
- (2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

- (3) Discourage the use of the interstate system for continuing controversies over child custody;
- (4) Deter abductions of children;
- (5) Avoid relitigation of custody decisions of other states in this state; and
- (6) Facilitate the enforcement of custody decrees of other states.

#### Comment to § 5402

The UCCJA did not contain a definition of “child.” The definition here is taken from the PKPA.

The definition of “child custody determination” now closely tracks the PKPA definition. It encompasses any judgment, decree or other order which provides for the custody of, or visitation with, a child, regardless of local terminology, including such labels as “managing conservatorship” or “parenting plan.”

The definition of “child custody proceeding” has been expanded from the comparable definition in the UCCJA. These listed proceedings have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur. Proceedings that affect access to the child are subject to this Act. The inclusion of proceedings related to protection from domestic violence is necessary because in some states domestic violence proceedings may affect custody of and visitation with a child. Juvenile delinquency or proceedings to confer contractual rights are not “custody proceedings” because they do not relate to civil aspects of access to a child. While a determination of paternity is covered under the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity cases are custody proceedings. Cases involving the Hague Convention on the Civil Aspects of International Child Abduction have not been included at this point because custody of the child is not determined in a proceeding under the International Child Abductions Remedies Act. Those proceedings are specially included in the Article 3 (Subchapter C) enforcement process.

“Commencement” has been included in the definitions as a replacement for the term “pending” found in the UCCJA. Its inclusion simplifies some of the simultaneous proceedings provisions of this Act.

The definition of “home state” has been reworded slightly. No substantive change is intended from the UCCJA.

The term “issuing state” is borrowed from UIFSA. In UIFSA, it refers to the court that issued the support or parentage order. Here, it refers to the state, or the court, which made the custody determination that is sought to be enforced. It is used primarily in Article 3 (Subchapter C).

The term “person” has been added to ensure that the provisions of this Act apply when the state is the moving party in a custody proceeding or

has legal custody of a child. The definition of “person” is the one that is mandated for all Uniform Acts.

The term “person acting as a parent” has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this state. The reference to the law of this state means that a court determines the issue of whether someone is a “person acting as a parent” under its own law. This reaffirms the traditional view that a court in a child custody case applies its own substantive law. The court does not have to undertake a choice-of-law analysis to determine whether the individual who is claiming to be a person acting as a parent has standing to seek custody of the child.

The definition of “tribe” is the one mandated for use in Uniform Acts. Should a state choose to apply this Act to tribal adjudications, this definition should be enacted as well as the entirety of section 104 (section 5404).

The term “contestant” has been omitted from this revision. It was defined in the UCCJA § 2(1) as “a person, including a parent, who claims a right to custody or visitation rights with respect to a child.” It seems to have served little purpose over the years, and whatever function it once had has been subsumed by state laws on who has standing to seek custody of or visitation with a child. In addition UCCJA § 2(5) which defined “decree” and “custody decree” has been eliminated as duplicative of the definition of “custody determination.”

#### Comment to § 5403

Two proceedings are governed by other acts. Adoption cases are excluded from this Act because adoption is a specialized area which is thoroughly covered by the Uniform Adoption Act (UAA) (1994). Most states either will adopt that Act or will adopt the jurisdictional provisions of that Act. Therefore, the jurisdictional provisions governing adoption proceedings are generally found elsewhere.

However, there are likely to be a number of instances where it will be necessary to apply this Act in an adoption proceeding. For example, if a state adopts the UAA then section 3-101 of the Act specifically refers in places to the Uniform Child Custody Jurisdiction Act which will become a reference to this Act. Second, the UAA requires that if an adoption is denied or set aside, the court is to determine the child’s custody. UAA § 3-704. Those custody proceedings would be subject to this Act. See Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter’s Ruminations*, 30 *Fam.L.Q.* 345 (1996).

Children that are the subject of interstate placements for adoption or foster care are governed by the Interstate Compact on the Placement of Children (ICPC). The UAA § 2-107 provides that the provisions of the compact, although not jurisdictional, supply the governing rules for all children who are subject to it. As stated in the Comments to that section: “Once a court exercises jurisdiction, the ICPC helps determine the legality of an interstate placement.” For a discussion of the relationship between the UCCJA and the ICPC see *J.D.S. v. Franks*, 893 P.2d 732 (Ariz. 1995).

Proceedings pertaining to the authorization of emergency medical care for children are outside the scope of this Act since they are not custody determinations. All states have procedures which allow the state to temporarily supersede parental authority for purposes of emergency medical procedures. Those provisions will govern without regard to this Act.

#### Comment to § 5404

This section extends the terms of this Act to Indian tribes. The definition of “tribe” is found at section 102(16) (section 5402). This Act does not purport to legislate custody jurisdiction for tribal courts. However, a Tribe could adopt this Act as enabling legislation by simply replacing references to “this State” with “this Tribe.”

If the Indian Child Welfare Act requires that a case be heard in tribal court, then its provisions determine jurisdiction.

#### Comment to § 5405

The provisions of this Act have international application to child custody proceedings and determinations of other countries. Another country will be treated as if it were a state of the United States for purposes of applying Articles 1 and 2 (Subchapters A and B) of this Act. Custody determinations of other countries will be enforced if the facts of the case indicate that jurisdiction was in substantial compliance with the requirements of this Act.

In this section, the term “child custody determination” should be interpreted to include proceedings relating to custody or analogous institutions of the other country. See generally, Article 3 of The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. 35 I.L.M. 1391 (1996).

A court of this state may refuse to apply this Act when the child custody law of the other country violates basic principles relating to the protection of human rights and fundamental freedoms. The same concept is found in section 20 of the Hague Convention on the Civil Aspects of International Child Abduction (return of the child may be refused if this would not be permitted by the fundamental principles of the requested

state relating to the protection of human rights and fundamental freedoms). In applying subsection (c), the court's scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system. This Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases.

This section is derived from section 23 of the UCCJA.

#### Comment to § 5406

No substantive changes have been made to this section which was section 12 of the UCCJA.

#### Comment to § 5407

No substantive change was made to this section which was section 24 of the UCCJA. The section is placed toward the beginning of Article 1 to emphasize its importance.

The language change from "case" to "question" is intended to clarify that it is the jurisdictional issue which must be expedited and not the entire custody case. Whether the entire custody case should be given priority is a matter of local law.

#### Comment to § 5408

This section authorizes notice and proof of service to be made by any method allowed by either the state which issues the notice or the state where the notice is received. This eliminates the need to specify the type of notice in the Act and, therefore, the provisions of section 5 of the UCCJA which specified how notice was to be accomplished were eliminated. The change reflects an approach in this Act to use local law to determine many procedural issues. Thus, service by facsimile is permissible if allowed by local rule in either state. In addition, where special service or notice rules are available for some procedures, in either jurisdiction, they could be utilized under this Act. For example, if a case involves domestic violence and the statute of either state would authorize notice to be served by a peace officer, such service could be used under this Act.

Although section 105 (section 5405) requires foreign countries to be treated as states for purposes of this Act, attorneys should be cautioned about service and notice in foreign countries. Countries have their own rules on service which must usually be followed. Attorneys should consult the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 36, T.I.A.S. 6638 (1965).

### Comment to § 5409

This section establishes a general principle that participation in a custody proceeding does not, by itself, give the court jurisdiction over any issue for which personal jurisdiction over the individual is required. The term “participate” should be read broadly. For example, if jurisdiction is proper under Article 2 (Subchapter B), a respondent in an original custody determination, or a party in a modification determination, should be able to request custody without this constituting the seeking of affirmative relief that would waive personal jurisdictional objections. Once jurisdiction is proper under Article 2 (Subchapter B), a party should not be placed in the dilemma of choosing between seeking custody or protecting a right not to be subject to a monetary judgment by a court with no other relationship to the party.

This section is comparable to the immunity provision of UIFSA § 314. A party who is otherwise not subject to personal jurisdiction can appear in a custody proceeding or an enforcement action without being subject to the general jurisdiction of the state by virtue of the appearance. However, if the petitioner would otherwise be subject to the jurisdiction of the state, appearing in a custody proceeding or filing an enforcement proceeding will not provide immunity. Thus, if the noncustodial parent moves from the state that decided the custody determination, that parent is still subject to the state’s jurisdiction for enforcement of child support if the child or an individual obligee continues to reside there. See UIFSA § 205. If the noncustodial parent returns to enforce the visitation aspects of the custody determination, the state can utilize any appropriate means to collect the back-due child support. However, the situation is different if both parties move from state A after the determination, with the custodial parent and the child establishing a new home state in state B, and the noncustodial parent moving to state C. The noncustodial parent is not, at this point, subject to the jurisdiction of state B for monetary matters. See *Kulko v. Superior Court*, 436 U.S. 84 (1978). If the noncustodial parent comes into state B to enforce the visitation aspects of the determination, the noncustodial parent is not subject to the jurisdiction of state B for those proceedings and issues requiring personal jurisdiction by filing the enforcement action.

A party also is immune from service of process during the time in the state for an enforcement action except for those claims for which jurisdiction could be based on contacts other than mere physical presence. Thus, when the noncustodial parent comes into state B to enforce the visitation aspects of the decree, state B cannot acquire jurisdiction over the child support aspects of the decree by serving the noncustodial parent in the state. Cf. UIFSA § 611 (personally serving the obligor in the state of the residence of the obligee is not by itself a sufficient jurisdictional basis to authorize a modification of child support). However, a party who is in this state and subject to the jurisdiction of another state may be served

with process to appear in that state, if allowable under the laws of that state.

As the Comments to UIFSA § 314 note, the immunity provided by this section is limited. It does not provide immunity for civil litigation unrelated to the enforcement action. For example, a party to an enforcement action is not immune from service regarding a claim that involves an automobile accident occurring while the party is in the state.

#### Comment to § 5410

This section emphasizes the role of judicial communications. It authorizes a court to communicate concerning any proceeding arising under this Act. This includes communication with foreign tribunals and tribal courts. Communication can occur in many different ways such as by telephonic conference and by on-line or other electronic communication. The Act does not preclude any method of communication and recognizes that there will be increasing use of modern communication techniques.

Communication between courts is required under sections 204, 206, and 307 (sections 5424, 5426 and 5447) and strongly suggested in applying section 207 (section 5427). Apart from those sections, there may be less need under this Act for courts to communicate concerning jurisdiction due to the prioritization of home state jurisdiction. Communication is authorized, however, whenever the court finds it would be helpful. The court may authorize the parties to participate in the communication. However, the Act does not mandate participation. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls often have to be made after-hours or whenever the schedules of judges allow.

This section does require that a record be made of the conversation and that the parties have access to that record in order to be informed of the content of the conversation. The only exception to this requirement is when the communication involves relatively inconsequential matters such as scheduling, calendars, and court records. Included within this latter type of communication would be matters of cooperation between courts under section 112 (section 5412). A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

The second sentence of subsection (b) protects the parties against unauthorized ex parte communications. The parties' participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not be considered a substitute for a hearing and the parties must be given an opportunity to

fairly and fully present facts and arguments on the jurisdictional issue before a determination is made. This may be done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.

#### Comment to § 5411

No substantive changes have been made to subsection (a) which was section 18 of the UCCJA.

Subsections (b) and (c) merely provide that modern modes of communication are permissible in the taking of testimony and the transmittal of documents. See UIFSA § 316.

#### Comment to § 5412

This section is the heart of the judicial cooperation provision of this Act. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other states and may assist courts of other states.

The provision on the assessment of costs for travel provided in the UCCJA § 19 has been changed. The UCCJA provided that the costs may be assessed against the parties or the state or county. Assessment of costs against a government entity in a case where the government is not involved is inappropriate and, therefore, that provision has been removed. In addition, if the state is involved as a party, assessment of costs and expenses against the state must be authorized by other law. It should be noted that the term “expenses” means out-of-pocket costs. Overhead costs should not be assessed as expenses.

No other substantive changes have been made. The term “social study” as used in the UCCJA was replaced with the modern term: “custody evaluation.” The Act does not take a position on the admissibility of a custody evaluation that was conducted in another state. It merely authorizes a court to seek assistance of, or render assistance to, a court of another state.

This section combines the text of sections 19 - 22 of the UCCJA.

#### Comment to § 5421

This section provides mandatory jurisdictional rules for the original child custody proceeding. It generally continues the provisions of the UCCJA § 3. However, there have been a number of changes to the jurisdictional bases.

**1. Home state jurisdiction.** The jurisdiction of the home state has been prioritized over other jurisdictional bases. Section 3 of the UCCJA

provided four independent and concurrent bases of jurisdiction. The PKPA provides that full faith and credit can only be given to an initial custody determination of a “significant connection” state when there is no home state. This Act prioritizes home state jurisdiction in the same manner as the PKPA thereby eliminating any potential conflict between the two acts.

The six-month extended home state provision of subsection (a)(1) has been modified slightly from the UCCJA. The UCCJA provided that home state jurisdiction continued for six months when the child had been removed by a person seeking the child’s custody or for other reasons and a parent or a person acting as a parent continues to reside in the home state. Under this Act, it is no longer necessary to determine why the child has been removed. The only inquiry relates to the status of the person left behind. This change provides a slightly more refined home state standard than the UCCJA or the PKPA, which also requires a determination that the child has been removed “by a contestant or for other reasons.” The scope of the PKPA’s provision is theoretically narrower than this Act. However, the phrase “or for other reasons” covers most fact situations where the child is not in the home state and, therefore, the difference has no substantive effect.

In another sense, the six-month extended home state jurisdiction provision in this Act is narrower than the comparable provision in the PKPA. The PKPA’s definition of extended home state is more expansive because it applies whenever a “contestant” remains in the home state. That class of individuals has been eliminated in this Act. This Act retains the original UCCJA classification of “parent or person acting as parent” to define who must remain for a state to exercise the six-month extended home state jurisdiction. This eliminates the undesirable jurisdictional determinations which would occur as a result of differing state substantive laws on visitation involving grandparents and others. For example, if state A’s law provided that grandparents could obtain visitation with a child after the death of one of the parents, then the grandparents, who would be considered “contestants” under the PKPA, could file a proceeding within six months after the remaining parent moved and have the case heard in state A. However, if state A did not provide that grandparents could seek visitation under such circumstances, the grandparents would not be considered “contestants” and state B where the child acquired a new home state would provide the only forum. This Act bases jurisdiction on the parent and child or person acting as a parent and child relationship without regard to grandparents or other potential seekers of custody or visitation. There is no conflict with the broader provision of the PKPA. The PKPA in § (c)(1) authorizes states to narrow the scope of their jurisdiction.

**2. Significant connection jurisdiction.** This jurisdictional basis has been amended in four particulars from the UCCJA. First, the “best interest” language of the UCCJA has been eliminated. This phrase tended to create confusion between the jurisdictional issue and the substantive

custody determination. Since the language was not necessary for the jurisdictional issue, it has been removed.

Second, the UCCJA based jurisdiction on the presence of a significant connection between the child and the child's parents or the child and at least one contestant. This Act requires that the significant connections be between the child, the child's parents or the child and a person acting as a parent.

Third, a significant connection state may assume jurisdiction only when there is no home state or when the home state decides that the significant connection state would be a more appropriate forum under section 207 or 208 (section 5427 or 5428).

Fourth, the determination of significant connections has been changed to eliminate the language of "present or future care." The jurisdictional determination should be made by determining whether there is sufficient evidence in the state for the court to make an informed custody determination. That evidence might relate to the past as well as to the "present or future."

Emergency jurisdiction has been moved to a separate section. This is to make it clear that the power to protect a child in crisis does not include the power to enter a permanent order for that child except as provided by that section.

Subsection (a)(3) provides for jurisdiction when all states with jurisdiction under subsections (a)(1) and (2) determine that this state is a more appropriate forum. The determination would have to be made by all states with jurisdiction under subsection (a)(1) and (2). Jurisdiction would not exist under this paragraph because the home state determined it is a more appropriate place to hear the case if there is another state that could exercise significant connection jurisdiction under subsection (a)(2).

Subsection (a)(4) retains the concept of jurisdiction by necessity as found in the UCCJA and in the PKPA. This default jurisdiction only occurs if no other state would have jurisdiction under subsections (a)(1) through (a)(3).

Subsections (b) and (c) clearly state the relationship between jurisdiction under this Act and other forms of jurisdiction. Personal jurisdiction over, or the physical presence of, a parent or the child is neither necessary nor required under this Act. In other words, neither minimum contacts nor service within the state is required for the court to have jurisdiction to make a custody determination. Further, the presence of minimum contacts or service within the state does not confer jurisdiction to make a custody determination. Subject to section 204 (section 5424), satisfaction of the requirements of subsection (a) is mandatory.

The requirements of this section, plus the notice and hearing provisions of the Act, are all that is necessary to satisfy due process. This Act, like the UCCJA and the PKPA is based on Justice Frankfurter's concurrence in *May v. Anderson*, 345 U.S. 528 (1953). As pointed out by

Professor Bodenheimer, the reporter for the UCCJA, no “workable interstate custody law could be built around [Justice] Burton’s plurality opinion . . . .” Bridgette Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 Vand.L.Rev. 1207, 1233 (1969). It should also be noted that since jurisdiction to make a child custody determination is subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is ineffective.

#### Comment to § 5422

This is a new section addressing continuing jurisdiction. Continuing jurisdiction was not specifically addressed in the UCCJA. Its absence caused considerable confusion, particularly because the PKPA, § 1738(d), requires other states to give full faith and credit to custody determinations made by the original decree state pursuant to the decree state’s continuing jurisdiction so long as that state has jurisdiction under its own law and remains the residence of the child or any contestant.

This section provides the rules of continuing jurisdiction and borrows from UIFSA as well as recent UCCJA case law. The continuing jurisdiction of the original decree state is exclusive. It continues until one of two events occurs:

1. If a parent or a person acting as a parent remains in the original decree state, continuing jurisdiction is lost when neither the child, the child and a parent, nor the child and a person acting as a parent continue to have a significant connection with the original decree state and there is no longer substantial evidence concerning the child’s care, protection, training and personal relations in that state. In other words, even if the child has acquired a new home state, the original decree state retains exclusive, continuing jurisdiction, so long as the general requisites of the “substantial connection” jurisdiction provisions of section 201 (section 5421) are met. If the relationship between the child and the person remaining in the state with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist.

The use of the phrase “a court of this state” under subsection (a)(1) makes it clear that the original decree state is the sole determinant of whether jurisdiction continues. A party seeking to modify a custody determination must obtain an order from the original decree state stating that it no longer has jurisdiction.

2. Continuing jurisdiction is lost when the child, the child’s parents, and any person acting as a parent no longer reside in the original decree state. The exact language of subsection (a)(2) was the subject of considerable debate. Ultimately the Conference settled on the phrase that “a court of this state or a court of another state determines that the child,

the child's parents, and any person acting as a parent do not presently reside in this state" to determine when the exclusive, continuing jurisdiction of a state ended. The phrase is meant to be identical in meaning to the language of the PKPA which provides that full faith and credit is to be given to custody determinations made by a state in the exercise of its continuing jurisdiction when that "state remains the residence of . . . ." The phrase is also the equivalent of the language "continues to reside" which occurs in UIFSA § 205(a)(1) to determine the exclusive, continuing jurisdiction of the state that made a support order. The phrase "remains the residence of" in the PKPA has been the subject of conflicting case law. It is the intention of this Act that subsection (a)(2) of this section means that the named persons no longer continue to actually live within the state. Thus, unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the state to live elsewhere, the exclusive, continuing jurisdiction ceases.

The phrase "do not presently reside" is not used in the sense of a technical domicile. The fact that the original determination state still considers one parent a domiciliary does not prevent it from losing exclusive, continuing jurisdiction after the child, the parents, and all persons acting as parents have moved from the state.

If the child, the parents, and all persons acting as parents have all left the state which made the custody determination prior to the commencement of the modification proceeding, considerations of waste of resources dictate that a court in state B, as well as a court in state A, can decide that state A has lost exclusive, continuing jurisdiction.

The continuing jurisdiction provisions of this section are narrower than the comparable provisions of the PKPA. That statute authorizes continuing jurisdiction so long as any "contestant" remains in the original decree state and that state continues to have jurisdiction under its own law. This Act eliminates the contestant classification. The Conference decided that a remaining grandparent or other third party who claims a right to visitation, should not suffice to confer exclusive, continuing jurisdiction on the state that made the original custody determination after the departure of the child, the parents and any person acting as a parent. The significant connection to the original decree state must relate to the child, the child and a parent, or the child and a person acting as a parent. This revision does not present a conflict with the PKPA. The PKPA's reference in § 1738(d) to § 1738(c)(1) recognizes that states may narrow the class of cases that would be subject to exclusive, continuing jurisdiction. However, during the transition from the UCCJA to this Act, some states may continue to base continuing jurisdiction on the continued presence of a contestant, such as a grandparent. The PKPA will require that such decisions be enforced. The problem will disappear as states adopt this Act to replace the UCCJA.

Jurisdiction attaches at the commencement of a proceeding. If state A had jurisdiction under this section at the time a modification proceeding was commenced there, it would not be lost by all parties moving out of the state prior to the conclusion of proceeding. State B would not have jurisdiction to hear a modification unless state A decided that state B was more appropriate under section 207 (section 5427).

Exclusive, continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the state, the noncustodial parent returns. As subsection (b) provides, once a state has lost exclusive, continuing jurisdiction, it can modify its own determination only if it has jurisdiction under the standards of section 201 (section 5421). If another state acquires exclusive, continuing jurisdiction under this section, then its orders cannot be modified even if this state has once again become the home state of the child.

In accordance with the majority of UCCJA case law, the state with exclusive, continuing jurisdiction may relinquish jurisdiction when it determines that another state would be a more convenient forum under the principles of section 207 (section 5427).

#### Comment to § 5423

This section complements section 202 (section 5422) and is addressed to the court that is confronted with a proceeding to modify a custody determination of another state. It prohibits a court from modifying a custody determination made consistently with this Act by a court in another state unless a court of that state determines that it no longer has exclusive, continuing jurisdiction under section 202 (section 5422) or that this state would be a more convenient forum under section 207 (section 5427). The modification state is not authorized to determine that the original decree state has lost its jurisdiction. The only exception is when the child, the child's parents, and any person acting as a parent do not presently reside in the other state. In other words, a court of the modification state can determine that all parties have moved away from the original state. The court of the modification state must have jurisdiction under the standards of section 201 (section 5421).

#### Comment to § 5424

The provisions of this section are an elaboration of what was formerly section 3(a)(3) of the UCCJA. It remains, as Professor Bodenheimer's comments to that section noted, "an extraordinary jurisdiction reserved for extraordinary circumstances."

This section codifies and clarifies several aspects of what has become common practice in emergency jurisdiction cases under the UCCJA and PKPA. First, a court may take jurisdiction to protect the child even though it can claim neither home state nor significant connection

jurisdiction. Second, the duties of states to recognize, enforce and not modify a custody determination of another state do not take precedence over the need to enter a temporary emergency order to protect the child.

Third, a custody determination made under the emergency jurisdiction provisions of this section is a temporary order. The purpose of the order is to protect the child until the state that has jurisdiction under sections 201 - 203 (sections 5421 through 5423) enters an order.

Under certain circumstances, however, subsection (b) provides that an emergency custody determination may become a final custody determination. If there is no existing custody determination, and no custody proceeding is filed in a state with jurisdiction under sections 201 - 203 (sections 5421 through 5423), an emergency custody determination made under this section becomes a final determination, if it so provides, when the state that issues the order becomes the home state of the child.

Subsection (c) is concerned with the temporary nature of the order when there exists a prior custody order that is entitled to be enforced under this Act or when a subsequent custody proceeding is filed in a state with jurisdiction under sections 201 - 203 (sections 5421 through 5423). Subsection (c) allows the temporary order to remain in effect only so long as is necessary for the person who obtained the determination under this section to present a case and obtain an order from the state with jurisdiction under sections 201 - 203 (sections 5421 through 5423). That time period must be specified in the order. If there is an existing order by a state with jurisdiction under sections 201 - 203 (sections 5421 through 5423), that order need not be reconfirmed. The temporary emergency determination would lapse by its own terms at the end of the specified period or when an order is obtained from the court with jurisdiction under sections 201 - 203 (sections 5421 through 5423). The court with appropriate jurisdiction also may decide, under the provisions of 207 (section 5427), that the court that entered the emergency order is in a better position to address the safety of the person who obtained the emergency order, or the child, and decline jurisdiction under section 207 (section 5427).

Any hearing in the state with jurisdiction under sections 201 -203 (sections 5421 through 5423) on the temporary emergency determination is subject to the provisions of sections 111 and 112 (sections 5411 and 5412). These sections facilitate the presentation of testimony and evidence taken out of state. If there is a concern that the person obtaining the temporary emergency determination under this section would be in danger upon returning to the state with jurisdiction under sections 201 - 203 (sections 5421 through 5423), these provisions should be used.

Subsection (d) requires communication between the court of the state that is exercising jurisdiction under this section and the court of another state that is exercising jurisdiction under sections 201 - 203 (sections 5421 through 5423). The pleading rules of section 209 (section 5429) apply fully to determinations made under this section. Therefore, a person

seeking a temporary emergency custody determination is required to inform the court pursuant to section 209(d) (section 5429(d)) of any proceeding concerning the child that has been commenced elsewhere. The person commencing the custody proceeding under sections 201 - 203 (sections 5421 through 5423) is required under section 209(a) (section 5429(a)) to inform the court about the temporary emergency proceeding. These pleading requirements are to be strictly followed so that the courts are able to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

**Relationship to the PKPA.** The definition of emergency has been modified to harmonize it with the PKPA. The PKPA's definition of emergency jurisdiction does not use the term "neglect." It defines an emergency as "mistreatment or abuse." Therefore, "neglect" has been eliminated as a basis for the assumption of temporary emergency jurisdiction. Neglect is so elastic a concept that it could justify taking emergency jurisdiction in a wide variety of cases. Under the PKPA, if a state exercised temporary emergency jurisdiction based on a finding that the child was neglected without a finding of mistreatment or abuse, the order would not be entitled to federal enforcement in other states.

**Relationship to protective order proceedings.** The UCCJA and the PKPA were enacted long before the advent of state procedures on the use of protective orders to alleviate problems of domestic violence. Issues of custody and visitation often arise within the context of protective order proceedings since the protective order is often invoked to keep one parent away from the other parent and the children when there is a threat of violence. This Act recognizes that a protective order proceeding will often be the procedural vehicle for invoking jurisdiction by authorizing a court to assume temporary emergency jurisdiction when the child's parent or sibling has been subjected to or threatened with mistreatment or abuse.

In order for a protective order that contains a custody determination to be enforceable in another state it must comply with the provisions of this Act and the PKPA. Although the Violence Against Women Act (VAWA), 18 U.S.C. § 2265, does provide an independent basis for the granting of full faith and credit to protective orders, it expressly excludes "custody" orders from the definition of "protection order," 18 U.S.C. § 2266.

Many states authorize the issuance of protective orders in an emergency without notice and hearing. This Act does not address the propriety of that procedure. It is left to local law to determine the circumstances under which such an order could be issued, and the type of notice that is required, in a case without an interstate element. However, an order issued after the assumption of temporary emergency jurisdiction is entitled to interstate enforcement and nonmodification under this Act and the PKPA only if there has been notice and a reasonable opportunity to be heard as set out in section 205 (section 5425). Although VAWA does require that full faith and credit be accorded to ex parte protective

orders if notice will be given and there will be a reasonable opportunity to be heard, it does not include a “custody” order within the definition of “protection order.”

VAWA does play an important role in determining whether an emergency exists. That Act requires a court to give full faith and credit to a protective order issued in another state if the order is made in accordance with the VAWA. This would include those findings of fact contained in the order. When a court is deciding whether an emergency exists under this section, it may not relitigate the existence of those factual findings.

#### Comment to § 5425

This section generally continues the notice provisions of the UCCJA. However, it does not attempt to dictate who is entitled to notice. Local rules vary with regard to persons entitled to seek custody of a child. Therefore, this section simply indicates that persons entitled to seek custody should receive notice but leaves the rest of the determination to local law. Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. The PKPA, § 1738A(e), requires that they be given notice in order for the custody determination to be entitled to full faith and credit under that Act.

State laws also vary with regard to whether a court has the power to issue an enforceable temporary custody order without notice and hearing in a case without any interstate element. Such temporary orders may be enforceable, as against due process objections, for a short period of time if issued as a protective order or a temporary restraining order to protect a child from harm. Whether such orders are enforceable locally is beyond the scope of this Act. Subsection (b) clearly provides that the validity of such orders and the enforceability of such orders is governed by the law which authorizes them and not by this Act. An order is entitled to interstate enforcement and nonmodification under this Act only if there has been notice and an opportunity to be heard. The PKPA, § 1738A(e), also requires that a custody determination is entitled to full faith and credit only if there has been notice and an opportunity to be heard.

Rules requiring joinder of people with an interest in the custody of and visitation with a child also vary widely throughout the country. The UCCJA has a separate section on joinder of parties which has been eliminated. The issue of who is entitled to intervene and who must be joined in a custody proceeding is to be determined by local state law.

A sentence of the UCCJA § 4 which indicated that persons outside the state were to be given notice and an opportunity to be heard in accordance with the provision of that Act has been eliminated as redundant.

### Comment to § 5426

This section represents the remnants of the simultaneous proceedings provision of the UCCJA § 6. The problem of simultaneous proceedings is no longer a significant issue. Most of the problems have been resolved by the prioritization of home state jurisdiction under section 201 (section 5421); the exclusive, continuing jurisdiction provisions of section 202 (section 5422); and the prohibitions on modification of section 203 (section 5423). If there is a home state, there can be no exercise of significant connection jurisdiction in an initial child custody determination and, therefore, no simultaneous proceedings. If there is a state of exclusive, continuing jurisdiction, there cannot be another state with concurrent jurisdiction and, therefore, no simultaneous proceedings. Of course, the home state, as well as the state with exclusive, continuing jurisdiction, could defer to another state under section 207 (section 5427). However, that decision is left entirely to the home state or the state with exclusive, continuing jurisdiction.

Under this Act, the simultaneous proceedings problem will arise only when there is no home state, no state with exclusive, continuing jurisdiction and more than one significant connection state. For those cases, this section retains the “first in time” rule of the UCCJA. Subsection (b) retains the UCCJA’s policy favoring judicial communication. Communication between courts is required when it is determined that a proceeding has been commenced in another state.

Subsection (c) concerns the problem of simultaneous proceedings in the state with modification jurisdiction and enforcement proceedings under Article 3 (Subchapter C). This section authorizes the court with exclusive, continuing jurisdiction to stay the modification proceeding pending the outcome of the enforcement proceeding, to enjoin the parties from continuing with the enforcement proceeding, or to continue the modification proceeding under such conditions as it determines are appropriate. The court may wish to communicate with the enforcement court. However, communication is not mandatory. Although the enforcement state is required by the PKPA to enforce according to its terms a custody determination made consistently with the PKPA, that duty is subject to the decree being modified by a state with the power to do so under the PKPA. An order to enjoin the parties from enforcing the decree is the equivalent of a temporary modification by a state with the authority to do so. The concomitant provision addressed to the enforcement court is section 306 (section 5446) of this Act. That section requires the enforcement court to communicate with the modification court in order to determine what action the modification court wishes the enforcement court to take.

The term “pending” that was utilized in the UCCJA section on simultaneous proceedings has been replaced. It has caused considerable confusion in the case law. It has been replaced with the term

“commencement of the proceeding” as more accurately reflecting the policy behind this section. The latter term is defined in section 102(5) (section 5402).

Comment to § 5427

This section retains the focus of section 7 of the UCCJA. It authorizes courts to decide that another state is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties. If so, the court may defer to the other state.

The list of factors that the court may consider has been updated from the UCCJA. The list is not meant to be exclusive. Several provisions require comment. Subsection (b)(1) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties. For this purpose, the court should determine whether the parties are located in different states because one party is a victim of domestic violence or child abuse. If domestic violence or child abuse has occurred, this factor authorizes the court to consider which state can best protect the victim from further violence or abuse.

In applying subsection (b)(3), courts should realize that distance concerns can be alleviated by applying the communication and cooperation provisions of sections 111 and 112 (sections 5411 and 5412).

In applying subsection (b)(7) on expeditious resolution of the controversy, the court could consider the different procedural and evidentiary laws of the two states, as well as the flexibility of the court dockets. It also should consider the ability of a court to arrive at a solution to all the legal issues surrounding the family. If one state has jurisdiction to decide both the custody and support issues, it would be desirable to determine that state to be the most convenient forum. The same is true when children of the same family live in different states. It would be inappropriate to require parents to have custody proceedings in several states when one state could resolve the custody of all the children.

Before determining whether to decline or retain jurisdiction, the court of this state may communicate, in accordance with section 110 (section 5410), with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court.

There are two departures from section 7 of the UCCJA. First, the court may not simply dismiss the action. To do so would leave the case in limbo. Rather, the court shall stay the case and direct the parties to file in the state that has been found to be the more convenient forum. The court is also authorized to impose any other conditions it considers appropriate. This might include the issuance of temporary custody orders during the time necessary to commence a proceeding in the designated state, dismissing the case if the custody proceeding is not commenced in the other state or resuming jurisdiction if a court of the other state refuses to take the case.

Second, UCCJA § 7(g), which allowed the court to assess fees and costs if it was a clearly inappropriate court, has been eliminated. If a court has jurisdiction under this Act, it could not be a clearly inappropriate court.

#### Comment to § 5428

The “Clean Hands” section of the UCCJA has been truncated in this Act. Since there is no longer a multiplicity of jurisdictions which could take cognizance of a child custody proceeding, there is less of a concern that one parent will take the child to another jurisdiction in an attempt to find a more favorable forum. Most of the jurisdictional problems generated by abducting parents should be solved by the prioritization of home state in section 201 (section 5421); the exclusive, continuing jurisdiction provisions of section 202 (section 5422); and the ban on modification in section 203 (section 5423). For example, if a parent takes the child from the home state and seeks an original custody determination elsewhere, the stay-at-home parent has six months to file a custody petition under the extended home state jurisdictional provision of section 201 (section 5421), which will ensure that the case is retained in the home state. If a petitioner for a modification determination takes the child from the state that issued the original custody determination, another state cannot assume jurisdiction as long as the first state exercises exclusive, continuing jurisdiction.

Nonetheless, there are still a number of cases where parents, or their surrogates, act in a reprehensible manner, such as removing, secreting, retaining, or restraining the child. This section ensures that abducting parents will not receive an advantage for their unjustifiable conduct. If the conduct that creates the jurisdiction is unjustified, courts must decline to exercise jurisdiction that is inappropriately invoked by one of the parties. For example, if one parent abducts the child pre-decree and establishes a new home state, that jurisdiction will decline to hear the case. There are exceptions. If the other party has acquiesced in the court’s jurisdiction, the court may hear the case. Such acquiescence may occur by filing a pleading submitting to the jurisdiction, or by not filing in the court that would otherwise have jurisdiction under this Act. Similarly, if the court that would have jurisdiction finds that the court of this state is a more appropriate forum, the court may hear the case.

This section applies to those situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it. If, for example, a parent in the state with exclusive, continuing jurisdiction under section 202 has either restrained the child from visiting with the other parent, or has retained the child after visitation, and seeks to modify the decree, this section is inapplicable. The conduct of restraining or retaining the child did not create jurisdiction. Jurisdiction existed under

this Act without regard to the parent's conduct. Whether a court should decline to hear the parent's request to modify is a matter of local law.

The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A technical illegality or wrong is insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another state to establish jurisdiction has engaged in unjustifiable conduct and the new state must decline to exercise jurisdiction under this section.

Subsection (b) authorizes the court to fashion an appropriate remedy for the safety of the child and to prevent a repetition of the unjustified conduct. Thus, it would be appropriate for the court to notify the other parent and to provide for foster care for the child until the child is returned to the other parent. The court could also stay the proceeding and require that a custody proceeding be instituted in another state that would have jurisdiction under this Act. It should be noted that the court is not making a forum non conveniens analysis in this section. If the conduct is unjustifiable, it must decline jurisdiction. It may, however, retain jurisdiction until a custody proceeding is commenced in the appropriate tribunal if such retention is necessary to prevent a repetition of the wrongful conduct or to ensure the safety of the child.

The attorney's fee standard for this section is patterned after the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). The assessed costs and fees are to be paid to the respondent who established that jurisdiction was based on unjustifiable conduct.

#### Comment to § 5429

The pleading requirements from section 9 of the UCCJA are generally carried over into this Act. However, the information is made subject to local law on the protection of names and other identifying information in certain cases. A number of states have enacted laws relating to the protection of victims in domestic violence and child abuse cases which provide for the confidentiality of victims' names, addresses, and other information. These procedures must be followed if the child custody proceeding of the state requires their applicability. See, e.g., California Family Law Code § 3409(a). If a state does not have local law that provides for protecting names and addresses, then subsection (e) or a similar provision should be adopted. Subsection (e) is based on the

National Council of Juvenile and Family Court Judges' Model Code on Domestic and Family Violence § 304(c). There are other models to choose from, in particular UIFSA § 312.

In subsection (a)(2), the term “proceedings” should be read broadly to include more than custody proceedings. Thus, if one parent was being criminally prosecuted for child abuse or custodial interference, those proceedings should be disclosed. If the child is subject to the Interstate Compact on the Placement of Children, facts relating to compliance with the Compact should be disclosed in the pleading or affidavit.

Subsection (b) has been added. It authorizes the court to stay the proceeding until the information required in subsection (a) has been disclosed, although failure to provide the information does not deprive the court of jurisdiction to hear the case. This follows the majority of jurisdictions which held that failure to comply with the pleading requirements of the UCCJA did not deprive the court of jurisdiction to make a custody determination.

#### Comment to § 5430

No major changes have been made to this section which was section 11 of the UCCJA. Language was added to subsection (a) to authorize the court to require a non-party who has physical custody of the child to produce that child.

Subsection (c) authorizes the court to enter orders providing for the safety of the child and the person ordered to appear with the child. If safety is a major concern, the court, as an alternative to ordering a party to appear with the child, could order and arrange for the party's testimony to be taken in another state under section 111 (section 5411). This alternative might be important when there are safety concerns regarding requiring victims of domestic violence or child abuse to travel to the jurisdiction where the abuser resides.

#### Comment to § 5441

For purposes of this subchapter, “petitioner” and “respondent” are defined. The definitions clarify certain aspects of the notice and hearing sections.

#### Comment to § 5442

This section applies the enforcement remedies provided by this article to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody

determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

Comment to § 5443

This section is based on section 13 of the UCCJA which contained the basic duty to enforce. The language of the original section has been retained and the duty to enforce is generally the same.

Enforcement of custody determinations of issuing states is also required by federal law in PKPA, 28 U.S.C. § 1738A(a). The changes made in Article 2 (Subchapter B) of this Act now make a state's duty to enforce and not modify a child custody determination of another state consistent with the enforcement and nonmodification provisions of the PKPA. Therefore, custody determinations made by a state pursuant to the UCCJA that would be enforceable under the PKPA will generally be enforced under this Act. However, if a state custody determination made pursuant to the UCCJA would not be enforceable under the PKPA, it will also not be enforceable under this Act. Thus a custody determination made by a "significant connection" jurisdiction when there is a home state is not enforceable under the PKPA regardless of whether a proceeding was ever commenced in the home state. Even though such a determination would be enforceable under the UCCJA with its four concurrent bases of jurisdiction, it would not be enforceable under this Act. This carries out the policy of the PKPA of strongly discouraging a state from exercising its concurrent "significant connection" jurisdiction under the UCCJA when another state could exercise "home state" jurisdiction.

This section also incorporates the concept of section 15 of the UCCJA to the effect that a custody determination of another state will be enforced in the same manner as a custody determination made by a court of this state. Whatever remedies are available to enforce a local determination can be utilized to enforce a custody determination of another state. However, it remains a custody determination of the state that issued it. A child custody determination of another state is not subject to modification unless the state would have jurisdiction to modify the determination under Article 2 (Subchapter B).

The remedies provided by this subchapter for the enforcement of a custody determination will normally be used. This subchapter does not detract from other remedies available under other local law. There is often a need for a number of remedies to ensure that a child custody determination is obeyed. If other remedies would easily facilitate enforcement, they are still available. The petitioner, for example, can still cite the respondent for contempt of court or file a tort claim for intentional interference with custodial relations if those remedies are available under local law.

#### Comment to § 5444

This section authorizes a court to issue a temporary order if it is necessary to enforce visitation rights without violating the rules on nonmodification contained in section 303 (section 5443). Therefore, if there is a visitation schedule provided in the custody determination that was made in accordance with Article 2 (Subchapter B), a court can issue an order under this section implementing the schedule. An implementing order may include make-up or substitute visitation.

A court may also issue a temporary order providing for visitation if visitation was authorized in the custody determination, but no specific schedule was included in the custody determination. Such an order could include a substitution of a specific visitation schedule for “reasonable and seasonable.”

However, a court may not, under subsection (a)(2), provide for a permanent change in visitation. Therefore, requests for a permanent change in the visitation schedule must be addressed to the court with exclusive, continuing jurisdiction under section 202 (section 5422) or modification jurisdiction under section 203 (section 5423). As under section 204 (section 5424), subsection (b) of this section requires that the temporary visitation order stay in effect only long enough to allow the person who obtained the order to obtain a permanent modification in the state with appropriate jurisdiction under Article 2 (Subchapter B).

#### Comment to § 5445

The remainder of this subchapter provides enforcement mechanisms for interstate child custody determinations.

This section authorizes a simple registration procedure that can be used to predetermine the enforceability of a custody determination. It parallels the process in UIFSA for the registration of child support orders. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA.

A custody determination can be registered without any accompanying request for enforcement. This may be of significant assistance in international cases. For example, the custodial parent under a foreign custody order can receive an advance determination of whether that order would be recognized and enforced before sending the child to the United States for visitation. Article 26 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 35 I.L.M. 1391 (1996), requires those states which accede to the Convention to provide such a procedure.

Comment to § 5446

A registered child custody determination can be enforced as if it was a child custody determination of this state. However, it remains a custody determination of the state that issued it. A registered custody order is not subject to modification unless the state would have jurisdiction to modify the order under Article 2 (Subchapter B).

Comment to § 5447

The pleading rules of section 308 (section 5448), require the parties to disclose any pending proceedings. Normally, an enforcement proceeding will take precedence over a modification action since the PKPA requires enforcement of child custody determinations made in accordance with its terms. However, the enforcement court must communicate with the modification court in order to avoid duplicative litigation. The courts might decide that the court with jurisdiction under Article 2 (Subchapter B) shall continue with the modification action and stay the enforcement proceeding. Or they might decide that the enforcement proceeding shall go forward. The ultimate decision rests with the court having exclusive, continuing jurisdiction under section 202 (section 5422), or if there is no state with exclusive, continuing jurisdiction, then the decision rests with the state that would have jurisdiction to modify under section 203 (section 5423). Therefore, if that court determines that the enforcement proceeding should be stayed or dismissed, the enforcement court should stay or dismiss the proceeding. If the enforcement court does not do so, the court with exclusive, continuing jurisdiction under section 202 (section 5422), or with modification jurisdiction under section 203 (section 5423), could enjoin the parties from continuing with the enforcement proceeding.

Comment to § 5448

This section provides the normal remedy that will be used in interstate cases: the production of the child in a summary, remedial process based on habeas corpus.

The petition is intended to provide the court with as much information as possible. Attaching certified copies of all orders sought to be enforced allows the court to have the necessary information. Most of the information relates to the permissible scope of the court's inquiry. The petitioner has the responsibility to inform the court of all proceedings that would affect the current enforcement action. Specific mention is made of certain proceedings to ensure that they are disclosed. A "procedure relating to domestic violence" includes not only protective order proceedings but also criminal prosecutions for child abuse or domestic violence.

The order requires the respondent to appear at a hearing on the next judicial day. The term “next judicial day” in this section means the next day when a judge is at the courthouse. At the hearing, the court will order the child to be delivered to the petitioner unless the respondent is prepared to assert that the issuing state lacked jurisdiction, that notice was not given in accordance with section 108 (section 5408), or that the order sought to be enforced has been vacated, modified, or stayed by a court with jurisdiction to do so under Article 2 (Subchapter B). The court is also to order payment of the fees and expenses set out in section 312 (section 5452). The court may set another hearing to determine whether additional relief available under this state’s law should be granted.

If the order has been registered and confirmed in accordance with section 304 (section 5444), the only defense to enforcement is that the order has been vacated, stayed or modified since the registration proceeding by a court with jurisdiction to do so under Article 2 (Subchapter B).

#### Comment to § 5449

In keeping with other sections of this Act, the question of how the petition and order should be served is left to local law.

#### Comment to § 5450

The scope of inquiry for the enforcing court is quite limited. Federal law requires the court to enforce the custody determination if the issuing state’s decree was rendered in compliance with the PKPA. 28 U.S.C. § 1738A(a). This Act requires enforcement of custody determinations that are made in conformity with Article 2’s (Subchapter B’s) jurisdictional rules.

The certified copy, or a copy of the certified copy, of the custody determination entitling the petitioner to the child is prima facie evidence of the issuing court’s jurisdiction to enter the order. If the order is one that is entitled to be enforced under Article 2 (Subchapter B) and if it has been violated, the burden shifts to the respondent to show that the custody determination is not entitled to enforcement.

It is a defense to enforcement that another jurisdiction has issued a custody determination that is required to be enforced under Article 2 (Subchapter B). An example is when one court has based its original custody determination on the UCCJA § 3(a)(2) (significant connections) and another jurisdiction has rendered an original custody determination based on the UCCJA § 3(a)(1) (home state). When this occurs, Article 2 (Subchapter B) of this Act, as well as the PKPA, mandate that the home state determination be enforced in all other states, including the state that rendered the significant connections determination.

Lack of notice in accordance with section 108 (section 5408) by a person entitled to notice and opportunity to be heard at the original custody determination is a defense to enforcement of the custody determination. The scope of the defense under this Act is the same as the defense would be under the law of the state that issued the notice. Thus, if the defense of lack of notice would not be available under local law if the respondent purposely hid from the petitioner, took deliberate steps to avoid service of process or elected not to participate in the initial proceedings, the defense would also not be available under this Act.

There are no other defenses to an enforcement action. If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for the assumption of emergency jurisdiction under section 204 (section 5424) of this Act. Upon the finding of an emergency, the court issues a temporary order and directs the parties to proceed either in the court that is exercising continuing jurisdiction over the custody proceeding under section 202 (section 5422), or the court that would have jurisdiction to modify the custody determination under section 203 (section 5423).

The court shall determine at the hearing whether fees should be awarded under section 312 (section 5452). If so, it should order them paid. The court may determine if additional relief is appropriate, including requesting law enforcement officers to assist the petitioner in the enforcement of the order. The court may set a hearing to determine whether further relief should be granted.

The remainder of this section is derived from UIFSA § 316 with regard to the privilege of self-incrimination, spousal privileges, and immunities. It is included to keep parallel the procedures for child support and child custody proceedings to the extent possible.

#### Comment to § 5451

This section provides a remedy for emergency situations where there is a reason to believe that the child will suffer imminent, serious physical harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement proceeding. If the court finds such harm exists, it should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings.

The term “harm” cannot be totally defined and, as in the issuance of temporary restraining orders, the appropriate issuance of a warrant is left to the circumstances of the case. Those circumstances include cases where the respondent is the subject of a criminal proceeding as well as situations where the respondent is secreting the child in violation of a court order, abusing the child, a flight risk and other circumstances that the court concludes make the issuance of notice a danger to the child. The court must hear the testimony of the petitioner or another witness prior to

issuing the warrant. The testimony may be heard in person, via telephone, or by any other means acceptable under local law. The court must state the reasons for the issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the state. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour.

The warrant must provide for the placement of the child pending the determination of the enforcement proceeding. Since the issuance of the warrant would not occur absent a risk of serious harm to the child, placement cannot be with the respondent. Normally, the child would be placed with the petitioner. However, if placement with the petitioner is not indicated, the court can order any other appropriate placement authorized under the laws of the court's state. Placement with the petitioner may not be indicated if there is a likelihood that the petitioner also will flee the jurisdiction. Placement with the petitioner may not be practical if the petitioner is proceeding through an attorney and is not present before the court.

This section authorizes the court to utilize whatever means are available under local law to ensure the appearance of the petitioner and child at the enforcement hearing. Such means might include cash bonds, a surrender of a passport, or whatever the court determines is necessary.

#### Comment to § 5452

This section is derived from the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). Normally the court will award fees and costs against the non-prevailing party. Included as expenses are the amount of investigation fees incurred by private persons or by public officials as well as the cost of child placement during the proceedings.

The non-prevailing party has the burden of showing that such an award would be clearly inappropriate. Fees and costs may be inappropriate if their payment would cause the parent and child to seek public assistance.

This section implements the policies of section 8(c) of Pub.L. 96-611 (part of the PKPA) which provides that:

In furtherance of the purposes of section 1738A of title 28, United States Code [this section], as added by subsection (a) of this section, State courts are encouraged to -

\* \* \*

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination. . . .

The term “prevailing party” is not given a special definition for this Act. Each state will apply its own standard.

Subsection (b) was added to ensure that this section would not apply to the state unless otherwise authorized. The language is taken from UIFSA § 313 (court may assess costs against obligee or support enforcement agency only if allowed by local law).

#### Comment to § 5453

The enforcement order, to be effective, must also be enforced by other states. This section requires courts of this state to enforce and not modify enforcement orders issued by other states when made consistently with the provisions of this Act.

#### Comment to § 5454

The order may be appealed as an expedited civil matter. An enforcement order should not be stayed by the court. Provisions for a stay would defeat the purpose of having a quick enforcement procedure. If there is a risk of serious mistreatment or abuse to the child, a petition to assume emergency jurisdiction must be filed under section 204 (section 5424). This section leaves intact the possibility of obtaining an extraordinary remedy such as mandamus or prohibition from an appellate court to stay the court’s enforcement action. In many states, it is not possible to limit the constitutional authority of appellate courts to issue a stay. However, unless the information before the appellate panel indicates that emergency jurisdiction would be assumed under section 204 (section 5424), there is no reason to stay the enforcement of the order pending appeal.

#### Comment to § 5455

Sections 315 - 317 (sections 5455 through 5457) are derived from the recommendations of the *Obstacles Study* that urge a role for public authorities in civil enforcement of custody and visitation determinations. One of the basic policies behind this approach is that, as is the case with child support, the involvement of public authorities will encourage the parties to abide by the terms of the court order. The prosecutor usually would be the most appropriate public official to exercise authority under this section. However, states may locate the authority described in this section in the most appropriate public office for their governmental structure. The authority could be, for example, the Friend of the Court Office or the Attorney General. If the parties know that prosecutors and law enforcement officers are available to help secure the return of a child, the parties may be deterred from interfering with the exercise of rights established by court order.

The use of public authorities should provide a more effective method of remedying violations of the custody determination. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the prosecutor or other government official as an enforcement agency will help ensure that remedies of this Act can be made available regardless of income level. In addition, the prosecutor may have resources to draw on that are unavailable to the average litigant.

The role of the public authorities should generally not begin until there is a custody determination that is sought to be enforced. The Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation of the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. This Act does not mandate that the public authorities be involved in all cases referred to it. There is only so much time and money available for enforcement proceedings. Therefore, the public authorities eventually will develop guidelines to determine which cases will receive priority.

The use of civil procedures instead of, or in addition to, filing and prosecuting criminal charges enlarges the prosecutor's options and may provide a more economical and less disruptive means of solving problems of criminal abduction and retention. With the use of criminal proceedings alone, the procedure may be inadequate to ensure the return of the child. The civil options would permit the prosecutor to resolve that recurring and often frustrating problem.

A concern was expressed about whether allowing the prosecutor to use civil means as a method of settling a child abduction violates either DR 7-105(A) of the Code of Professional Responsibility or Model Rule of Professional Responsibility 4.4. Both provisions either explicitly or implicitly disapprove of a lawyer threatening criminal action to gain an advantage in a civil case. However, the prohibition relates to threats that are solely to gain an advantage in a civil case. If the prosecutor has a good faith reason for pursuing the criminal action, there is no ethical violation. See *Committee on Legal Ethics v. Printz*, 416 S.E.2d 720 (W.Va. 1992) (lawyer can threaten to press criminal charges against a client's former employee unless employee made restitution).

It must be emphasized that the public authorities do not become involved in the merits of the case. They are authorized only to locate the child and enforce the custody determination. The public authority is authorized by this section to utilize any civil proceeding to secure the enforcement of the custody determination. In most jurisdictions, that would be a proceeding under this Act. If the prosecutor proceeds pursuant to this Act, the prosecutor is subject to its provisions. There is nothing in this Act that would prevent a state from authorizing the prosecutor or other

public official to use additional remedies beyond those provided in this Act.

The public authority does not represent any party to the custody determination. It acts as a “friend of the court.” Its role is to ensure that the custody determination is enforced.

Sections 315 - 317 (sections 5455 through 5457) are limited to cases covered by this Act, i.e., interstate cases. However, states may, if they wish, extend this part of the act to intrastate cases.

It should also be noted that the provisions of this section relate to the civil enforcement of child custody determinations. Nothing in this section is meant to detract from the ability of the prosecutor to use criminal provisions in child abduction cases.

#### Comment to § 5456

This section authorizes law enforcement officials to assist in locating a child and enforcing a custody determination when requested to do so by the public authorities. It is to be read as an enabling provision. Whether law enforcement officials have discretion in responding to a request by the prosecutor or other public official is a matter of local law.

#### Comment to § 5457

One of the major problems of utilizing public officials to locate children and enforce custody and visitation determinations is cost. This section authorizes the prosecutor and law enforcement to recover costs against the non-prevailing party. The use of the term “direct” indicates that overhead is not a recoverable cost. This section cannot be used to recover the value of the time spent by the public authorities’ attorneys.

#### Comment to § 5471

This section is not part of the UCCJEA and is included to provide intrastate application of the Act.



**PROBATE, ESTATES AND FIDUCIARIES CODE (20 PA.C.S.) AND  
DOMESTIC RELATIONS CODE (23 PA.C.S.)  
OMNIBUS AMENDMENTS**

Act of Nov. 29, 2004, P.L. 1357, No. 175  
Session of 2004  
No. 2004-175

SB 95

AN ACT

Amending Titles 20 (Decedents, Estates and Fiduciaries) and 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for right of surviving spouse to elective share; further defining “separate and apart” for purposes of divorce; providing for premarital agreements; further providing for decree of court in actions for divorce; further defining “marital property” for purposes of certain property rights; and further providing for equitable division of marital property, for disposition of property to defeat obligations and for statement of reasons for distribution.

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

**Section 1.** Section 2203(a) of Title 20 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection to read:

§ 2203. Right of election; resident decedent.

(a) Property subject to election.--[When] Except as provided in subsection (c), when a married person domiciled in this Commonwealth dies, his surviving spouse has a right to an elective share of one-third of the following property:

- (1) Property passing from the decedent by will or intestacy.
- (2) Income or use for the remaining life of the spouse of property conveyed by the decedent during the marriage to the extent that the decedent at the time of his death had the use of the property or an interest in or power to withdraw the income thereof.
- (3) Property conveyed by the decedent during his lifetime to the extent that the decedent at the time of his death had a power to revoke the conveyance or to consume, invade or dispose of the principal for his own benefit.
- (4) Property conveyed by the decedent during the marriage to himself and another or others with right of survivorship to the extent of any interest in the property that the decedent had the power at the time of his death unilaterally to convey absolutely or in fee.
- (5) Survivorship rights conveyed to a beneficiary of an annuity contract to the extent it was purchased by the decedent during the marriage and the decedent was receiving annuity payments therefrom at the time of his death.

(6) Property conveyed by the decedent during the marriage and within one year of his death to the extent that the aggregate amount so conveyed to each donee exceeds \$3,000, valued at the time of conveyance.

In construing this subsection, a power in the decedent to withdraw income or principal, or a power in any person whose interest is not adverse to the decedent to distribute to or use for the benefit of the decedent any income or principal, shall be deemed to be a power in the decedent to withdraw so much of the income or principal as is subject to such power, even though such income or principal may be distributed only for support or other particular purpose or only in limited periodic amounts.

\* \* \*

(c) Nonapplicability.--Pursuant to 23 Pa.C.S. § 3323(d.1) (relating to decree of court), this section shall not apply in the event a married person domiciled in this Commonwealth dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 and grounds have been established as provided in 23 Pa.C.S. § 3323(g).

**Section 1.1.** The definition of “separate and apart” in section 3103 of Title 23 is amended to read:

§ 3103. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

“Separate and apart.” [Complete cessation] Cessation of [any and all] cohabitation, whether living in the same residence or not. In the event a complaint in divorce is filed and served, it shall be presumed that the parties commenced to live separate and apart not later than the date that the complaint was served.

\* \* \*

**Section 2.** Title 23 is amended by adding a section to read:

§ 3106. Premarital agreements.

(a) General rule.--The burden of proof to set aside a premarital agreement shall be upon the party alleging the agreement to be unenforceable. A premarital agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

(1) the party did not execute the agreement voluntarily; or

(2) the party, before execution of the agreement:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have an adequate knowledge of the property or financial obligations of the other party.

(b) Definition.--As used in this section, the term “premarital agreement” means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

**Section 3.** Sections 3323(c), 3501(a) and 3502(a) of Title 23 are amended and the sections are amended by adding subsections to read:

§ 3323. Decree of court.

\* \* \*

[(c) Bifurcation.--In the event that the court is unable for any reason to determine and dispose of the matters provided for in subsection (b) within 30 days after the report of the master has been filed, it may enter a decree of divorce or annulment. Upon the request of either party and after a hearing, the court may order alimony pendente lite, reasonable counsel fees, costs and expenses and may make a temporary order necessary to protect the interests of the parties pending final disposition of the matters in subsection (b).]

(c.1) Bifurcation.--With the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b). In the absence of the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b) if:

(1) grounds have been established as provided in subsection (g); and

(2) the moving party has demonstrated that:

(i) compelling circumstances exist for the entry of the decree of divorce or annulment; and

(ii) sufficient economic protections have been provided for the other party during the pendency of the disposition of the matters provided for in subsection (b).

\* \* \*

(d.1) Death of a party.--In the event one party dies during the course of divorce proceedings, no decree of divorce has been entered and grounds have been established as provided in subsection (g), the parties’ economic rights and obligations arising under the marriage shall be determined under this part rather than under 20 Pa.C.S. (relating to decedents, estates and fiduciaries).

\* \* \*

(g) Grounds established.--For purposes of subsections (c.1) and (d.1), grounds are established as follows:

(1) In the case of an action for divorce under section 3301(a) or (b) (relating to grounds for divorce), the court adopts a report of the master or makes its own findings that grounds for divorce exist.

(2) In the case of an action for divorce under section 3301(c), both parties have filed affidavits of consent.

(3) In the case of an action for divorce under section 3301(d), an affidavit has been filed and no counter-affidavit has been filed or, if a counter-affidavit has been filed denying the affidavit’s averments, the court determines that the marriage is irretrievably broken and the parties have lived separate and apart for at least two years at the time of the filing of the affidavit.

§ 3501. Definitions.

(a) General rule.--As used in this chapter, “marital property” means all property acquired by either party during the marriage[, including the increase in value, prior to the date of final separation,] and the increase in value of any nonmarital property acquired pursuant to paragraphs (1) and (3)[, except:] as measured and determined under subsection (a.1). However, marital property does not include:

(1) Property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage.

(2) Property excluded by valid agreement of the parties entered into before, during or after the marriage.

(3) Property acquired by gift, except between spouses, bequest, devise or descent or property acquired in exchange for such property.

(4) Property acquired after final separation until the date of divorce, except for property acquired in exchange for marital assets.

(5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the date of final separation.

(6) Veterans’ benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958 (Public Law 85-857, 72 Stat. 1229), as amended, except for those benefits received by a veteran where the veteran has waived a portion of his military retirement pay in order to receive veterans’ compensation.

(7) Property to the extent to which the property has been mortgaged or otherwise encumbered in good faith for value prior to the date of final separation.

(8) Any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received.

(a.1) Measuring and determining the increase in value of nonmarital property.--The increase in value of any nonmarital property acquired pursuant to subsection (a)(1) and (3) shall be measured from the date of marriage or later acquisition date to either the date of final separation or the date as close to the hearing on equitable distribution as possible, whichever date results in a lesser increase. Any decrease in value of the nonmarital property of a party shall be offset against any increase in value of the nonmarital property of that party. However, a decrease in value of the nonmarital property of a party shall not be offset against any increase in value of the nonmarital property of the other party or against any other marital property subject to equitable division.

\* \* \*

(c) Defined benefit retirement plans.--Notwithstanding subsections (a), (a.1) and (b):

(1) In the case of the marital portion of a defined benefit retirement plan being distributed by means of a deferred distribution, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the total benefit and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

(2) In the case of the marital portion of a defined benefit retirement plan being distributed by means of an immediate offset, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the accrued benefit as of a date as close to the time of trial as reasonably possible and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements up to a date as close to the time of trial as reasonably possible except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

§ 3502. Equitable division of marital property.

(a) General rule.--[In] Upon the request of either party in an action for divorce or annulment, the court shall[, upon request of either party,] equitably divide, distribute or assign, in kind or otherwise, the marital property between the parties without regard to marital misconduct in such [proportions] percentages and in such manner as the court deems just after considering all relevant factors[, including:]. The court may consider each marital asset or group of assets independently and apply a different percentage to each marital asset or group of assets. Factors which are relevant to the equitable division of marital property include the following:

- (1) The length of the marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training or increased earning power of the other party.
- (5) The opportunity of each party for future acquisitions of capital assets and income.
- (6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
- (8) The value of the property set apart to each party.
- (9) The standard of living of the parties established during the marriage.
- (10) The economic circumstances of each party[,including Federal, State and local tax ramifications,] at the time the division of property is to become effective.
  - (10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
  - (10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.
- (11) Whether the party will be serving as the custodian of any dependent minor children.

\* \* \*

(f) Partial distribution.--The court, upon the request of either party, may at any stage of the proceedings enter an order providing for an interim partial distribution or assignment of marital property.

**Section 4.** Sections 3505(d) and 3506 of Title 23 are amended to read:

§ 3505. Disposition of property to defeat obligations.

\* \* \*

(d) Constructive trust for undisclosed assets.--If a party fails to disclose information required by [subsection (b)] general rule of the Supreme Court and in consequence thereof an asset or assets with a fair market value of [\$500] \$1,000 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition the court granting the award to declare the creation of a constructive trust as to all undisclosed assets for the benefit of the parties and their minor or dependent children, if any. The party in whose name the assets are held shall be declared the constructive trustee unless the court designates a different trustee, and the trust may include any terms and conditions the court may determine. The court shall grant the petition upon a finding of a failure to disclose the assets as required [under subsection (b)] by general rule of the Supreme Court.

\* \* \*

§ 3506. Statement of reasons for distribution.

In an order made under this chapter for the distribution of property, the court shall set forth the percentage of distribution for each marital asset or group of assets and the reason for the distribution ordered.

**Section 5.** This act shall apply as follows:

(1) The amendment of the definition of “separate and apart” in 23 Pa.C.S. § 3103 shall apply to complaints served before, on or after the effective date of this paragraph.

(2) The addition of 23 Pa.C.S. § 3106 shall apply to premarital agreements executed on or after the effective date of this paragraph.

(3) The amendment or addition of 23 Pa.C.S. § 3323(c) and (c.1) shall apply to bifurcation proceedings commenced on or after the effective date of this paragraph.

(4) The amendment or addition of 20 Pa.C.S. § 2203(a) and (c) and 23 Pa.C.S. § 3323(d.1) shall apply to the death of one of the parties on or after the effective date of this paragraph irrespective of whether the divorce proceeding was commenced before, on or after the effective date of this paragraph.

(5) The addition of 23 Pa.C.S. § 3323(g) shall apply to bifurcation proceedings commenced on or after the effective date of this paragraph and cases in which one of the parties dies on or after the effective date of this paragraph.

(6) The amendment or addition of 23 Pa.C.S. § 3501(a)(3) and (a.1) shall apply to all equitable distribution proceedings irrespective of whether the proceeding was commenced before, on or after the effective date of this paragraph.

(7) The amendment of 23 Pa.C.S. § 3501(c) shall apply to all equitable distribution proceedings commenced on or after the effective date of this paragraph.

(8) The amendment or addition of 23 Pa.C.S. § 3502(a) introductory paragraph, (10.1) and (10.2) shall apply to all equitable distribution proceedings irrespective of whether the proceeding was commenced before, on or after the effective date of this paragraph.

(9) The addition of 23 Pa.C.S. § 3502(f) shall apply to all divorce proceedings irrespective of whether the action was commenced before, on or after the effective date of this paragraph.

(10) The amendment of 23 Pa.C.S. § 3505(d) shall apply to all equitable distribution proceedings irrespective of whether the proceeding was commenced before, on or after the effective date of this paragraph.

(11) The amendment of 23 Pa.C.S. § 3506 shall apply to all orders made on or after the effective date of this paragraph.

**Section 6.** This act shall take effect in 60 days.

APPROVED--The 29th day of November, A. D. 2004.

EDWARD G. RENDELL

**JOINT STATE GOVERNMENT COMMISSION  
COMMENTS TO ACT NO. 175 of 2004**

The Joint State Government Commission and the Advisory Committee on Domestic Relations Law developed comments to the divorce and equitable distribution provisions, which were originally published in the April 1999 report. After enactment of 2003 Senate Bill No. 95 as Act No. 175 of 2004, the applicable comments were revised and finalized.

Comment to § 3103

The amendment to the definition of “separate and apart” establishes a rebuttable presumption designed to address the difficulty of proving a separation date, especially when the parties have not established different residences.

Comment to § 3106

Section 3106 is new. Currently, premarital agreements are governed by case law. In *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990), the Supreme Court discarded the approach that had been followed since its

1968 decision in *Hillegass Estate*, 431 Pa. 144, 244 A.2d 672. The *Hillegass* approach upheld a prenuptial agreement if it either made a reasonable provision for the spouse or was entered into after full and fair disclosure of financial status. The Supreme Court's 1987 plurality decision in *In re Estate of Geyer*, 516 Pa. 4982, 533 A.2d 423, stated that full and fair disclosure includes evidence that the parties are aware of the statutory rights they are relinquishing in the agreement. The *Simeone* decision rejected inquiry into whether a reasonable provision was made for a spouse and the parties' knowledge of their statutory rights and put premarital agreements on a par with other contracts, stating that they could be invalidated for fraud, misrepresentation or duress. It also recognized that because the parties to premarital agreements "stand in a relation of mutual confidence and trust," full and fair disclosure of the parties' financial positions is required.

Subsection (a) is modeled after section 6(a) of the Uniform Premarital Agreement Act and encompasses the approach of *Simeone*.

Section 6(a) of the Uniform Act provides that an agreement is not enforceable if the party challenging it did not execute it voluntarily, or if the agreement was unconscionable when executed and the challenging party did not receive and did not waive disclosure of the other party's property or financial obligations and could not reasonably have had adequate knowledge of such. Section 6(b) provides that where an agreement's modification or elimination of spousal support would cause a spouse to be eligible for public assistance, the court may award support to the extent necessary to avoid the eligibility.

While embracing the voluntary execution and disclosure provisions of the Uniform Act, subsection (a) does not adopt the unconscionability or public assistance provisions. Note that under the Uniform Act, lack of disclosure would render an agreement unenforceable only if the agreement were also unconscionable when executed.

Under subsection (a), the party seeking to set aside the agreement must prove that either the agreement was not executed voluntarily (paragraph (1)) or all the elements of paragraph (2) are met.

The definition of "premarital agreement" in subsection (b) is modeled after the definition in the Uniform Act.

#### Comment to § 3323

*Subsection (c)*: Subsection (c) is repealed. See comment to subsection (c.1).

*Subsection (c.1)*: New subsection (c.1) rejects the weighing of advantages and disadvantages under *Wolk v. Wolk*, 318 Pa. Super. 311, 464 A.2d 1359 (1983), rejects any notion of automatic bifurcation and statutorily provides for bifurcation with the consent of both parties. In absence of consent, bifurcation is permitted only under the limited circumstances provided for under paragraphs (1) and (2).

Part of the reasoning behind paragraph (1) is the idea that knowing bifurcation is not available until one year after the separation period has run (see proposed amendment to section 3301(d) reducing time period to one year) might motivate a party to move the process along by being cooperative in discovery and participating in the resolution of economic issues. Subsection (g) provides when grounds are established.

Paragraph (2) is intended to limit bifurcation to cases where compelling circumstances exist and where economic protections have been provided the other party. Paragraph (2) contemplates that the court will exercise its judgment as to what constitutes “compelling circumstances” and “sufficient economic protections.”

*Subsection (d.1):* Subsection (d.1) is new. Presently if a divorce is granted on a bifurcated basis, and one party dies prior to equitable distribution, the action will not abate and the court will decide the equitable distribution matter with the personal representative of the deceased party substituted as a party. However, if one party dies prior to the divorce decree being entered, the divorce action abates and the surviving spouse is left to exercise his or her elective rights under the probate code. This situation makes it difficult to advise clients on whether to bifurcate divorce proceedings, because of the difficulties often involved in predicting whether equitable distribution would provide a more favorable result than the elective share procedure.

This practical problem is solved if the death of one party does not abate the equitable distribution action (whether or not a divorce has been granted).

New subsection (d.1) provides that a divorce action does not abate upon the death of a party if grounds have been established under subsection (g). The parties’ economic rights and obligations are determined under equitable distribution principles, not under the elective share provisions of Chapter 22 of Title 20 (Decedents, Estates and Fiduciaries Code).

*Subsection (g):* This subsection is critical to the operation of subsections (c.1) and (d.1).

#### Comment to § 3501

*Subsection (a):* A technical amendment is made to paragraph (3) to make it consistent with paragraph (1).

*Subsection (a.1):* Section 3501(a.1) is new. The first sentence of this subsection essentially codifies the decision in *Litmans v. Litmans*, 449 Pa. Super. 209, 673 A.2d 382 (1996), as it pertains to when to measure the increase in value of nonmarital property. Some discussion and uncertainty regarding this issue followed the Supreme Court’s decision in *Solomon v. Solomon*, 531 Pa. 113, 611 A.2d 686 (1992), because of the Court’s inclusion of footnote eleven in that opinion. The *Litmans* court found that the Supreme Court in footnote eleven of *Solomon* was referring “to a

situation in which the increase in value of a nonmarital asset is determined as of the date of separation, there then ensues a long period of delay between separation and distribution, and the asset itself then decreases in value by the time of distribution. In such a case, footnote eleven would require the trial court to consider the ‘change in value’ of the nonmarital asset as a result of the delay.” 673 A.2d at 395 (emphasis added). The *Litmans* court viewed *Solomon* footnote eleven as “mere dictum” since the Supreme Court did not remand *Solomon* to the lower court for a determination in accordance with the footnote. 673 A.2d at 394.

The offset language of the second sentence of subsection (a.1) ensures that only the net increase in value of all of a party’s nonmarital property is considered part of the marital estate. To find the net increase in value, the increases in value of a party’s nonmarital assets are offset by the decreases in value of that party’s nonmarital assets. For example: A spouse enters a marriage with two nonmarital assets, each valued at \$50 for a total of \$100. During the marriage, one asset increases in value to \$100 and the other decreases in value to \$0, so that the total value of the nonmarital assets remains \$100. Under existing law, there is an argument that there would be a \$50 increase in value which would become marital property even though the total value of the nonmarital assets remained the same during the marriage. Some masters and trial courts have refused to consider decreases in nonmarital property as an offset against increases in other nonmarital property. Subsection (a.1) will specifically require such offset. Under subsection (a.1), the \$50 increase in one asset would be offset by the \$50 decrease in the other asset, and the resulting marital component of the nonmarital property would be \$0.

The last sentence of subsection (a.1) is intended to ensure that where one party has a decrease in value in that party’s nonmarital property, that decrease cannot be offset against any increase in value of nonmarital property of the other party or against the marital estate.

No distinction is made between consumption and decrease in value. Consumption may be addressed through the advocacy of counsel, and “malicious” consumption of an asset to avoid sharing it with the other spouse may be addressed under the dissipation factor in section 3502(a)(7) or under the court’s equity powers in section 3323(f).

*Subsection (c):* New subsection (c) seeks to reverse *Berrington v Berrington*, 534 Pa. 393, 633 A.2d 589 (1993), to adopt a coverture fraction methodology along the lines of *Holland v. Holland*, 403 Pa. Super. 116, 581 A.2d 58 (1991), and to include all postseparation enhancements except for postseparation monetary contributions by the employee spouse in the value of the pension. The new language codifies the result reached by Justices Flaherty, Cappy and Newman regarding the postseparation retirement enhancements in *Gordon v. Gordon*, 545 Pa. 391, 681 A.2d 732 (1996) (3-3 decision on this issue, affirming the Superior Court’s exclusion of the enhancements from the marital estate). Three early retirement inducements were at issue in *Gordon*. The justices

listed above opined that since no present efforts or contributions of the employee spouse were required to receive the supplemental retirement income and bonus inducements, they were includable in the marital estate. The third inducement was an annuity paid for partially by the employee spouse and partially by the employer. Justices Flaherty, Cappy and Newman would have included the portion of the annuity paid for by the employer in the marital estate.

Paragraph (c)(1) covers the deferred distribution of defined benefit retirement plans, and paragraph (c)(2) covers the immediate offset of such plans.

Where marital assets are sufficient to cover the nonemployee spouse's share of the pension, immediate offset is the preferred method of distribution. Where it is impracticable to use the immediate offset method, such as where the pension constitutes the bulk of the marital estate and the nonemployee spouse's share cannot be covered by other marital assets or where the pension has not yet vested, the distribution of the pension may be deferred.

#### Comment to § 3502

*Subsection (a):* The two new sentences in the introductory language of subsection (a) clarify current statutory law to specifically authorize courts to consider each marital asset independently in equitable distribution and, in the appropriate case, to apply a different percentage to each marital asset. The phrase "or group of assets" indicates that the court need not determine a distribution percentage for each individual asset in a marital estate.

The "tax ramifications" language of current subsection (a)(10) became effective in February of 1988 as an amendment to former section 401(d)(10) of the 1980 Divorce Code. In an opinion that was not handed down until May of 1988, the Supreme Court held that "potential tax liability may be considered in valuing marital assets only where a taxable event has occurred as a result of the divorce or equitable distribution of property or is certain to occur within a time frame such that the tax liability can be reasonably predicted." *Hovis v. Hovis*, 518 Pa. 137, 541 A.2d 1378, 1380-81 (1988). However, the *Hovis* court quoted the 1980 version of former section 401(d)(10) and noted that "[t]he Pennsylvania statute does not list potential tax liability as a factor to be considered in making an equitable distribution award." 541 A.2d at 1380. Notwithstanding the legislative statement in the 1988 amendments, and perhaps because the *Hovis* opinion was handed down after the amendments had become effective (but clearly decided under pre-amendment law), lower court cases after *Hovis* have required tax ramifications to be immediate and certain in order for them to be considered in equitable distribution. New subsection (a)(10.1) seeks to

change this interpretation by making clear that tax ramifications are relevant and need not be immediate and certain.

New subsection (a)(10.2) covers such expenses as brokerage commissions and the transfer tax on the sale of a house.

*Subsection (f):* This amendment specifically authorizes the court to make interim equitable distribution awards, a power that was never intended to be proscribed but which some courts and commentators believe does not exist.

#### Comment to § 3505

*Subsection (d):* The fair market value amount in subsection (d) is increased from \$500 to \$1,000 to account for the effects of inflation since the section was enacted. Technical amendments recognize that subsection (b) was suspended by court rule. See Pennsylvania Rule of Civil Procedure No. 1920.33 for the requirements regarding disclosure of assets.

#### Comment to § 3506

The amendment to this section conforms with the amendments made to section 3502(a).

# EQUITABLE DIVISION OF MARITAL PROPERTY IN DIVORCE ACTIONS

Act of Jun. 15, 2005, P.L. 7, No. 4  
Session of 2005  
No. 2005-4

SB 124

## AN ACT

Providing for applicability of certain provisions relating to equitable division of marital property in divorce actions; and making a related repeal.

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

**Section 1.** The provisions of 23 Pa.C.S. § 3501(c) shall apply to all equitable distribution proceedings pending on or after the effective date of this section.

**Section 2.** Section 5(7) of the act of November 29, 2004 (P.L.1357, No.175), entitled “An act amending Titles 20 (Decedents, Estates and Fiduciaries) and 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for right of surviving spouse to elective share; further defining ‘separate and apart’ for purposes of divorce; providing for premarital agreements; further providing for decree of court in actions for divorce; further defining ‘marital property’ for purposes of certain property rights; and further providing for equitable division of marital property, for disposition of property to defeat obligations and for statement of reasons for distribution,” is repealed.

**Section 3.** This act shall take effect immediately.

APPROVED--The 15th day of June, A.D. 2005.

EDWARD G. RENDELL



**DOMESTIC RELATIONS CODE (23 PA.C.S.) AND  
JUDICIAL CODE (42 PA.C.S.) - CONTEMPT FOR NONCOMPLIANCE WITH  
VISITATION OR PARTIAL CUSTODY ORDER AND CHILD CUSTODY**

Act of Nov. 23, 2010, P.L. 1106, No. 112  
Session of 2010  
No. 2010-112

HB 1639

AN ACT

Amending Titles 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for contempt for noncompliance with visitation or partial custody order and for child custody; and making conforming amendments.

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

**Section 1.** Section 4346, Chapter 53 and Subchapter A headings and sections 5301, 5302, 5303, 5304, 5305, 5306, 5307, 5308, 5309, 5310, 5311, 5312, 5313, 5314 and 5315 of Title 23 of the Pennsylvania Consolidated Statutes are repealed:

[§ 4346. Contempt for noncompliance with visitation or partial custody order.

(a) General rule.--A party who willfully fails to comply with any visitation or partial custody order may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:

- (1) Imprisonment for a period not to exceed six months.
- (2) A fine not to exceed \$500.
- (3) Probation for a period not to exceed six months.

(4) An order for nonrenewal, suspension or denial of operating privilege pursuant to section 4355 (relating to denial or suspension of licenses).

(b) Condition for release.--An order committing a person to jail under this section shall specify the condition which, when fulfilled, will result in the release of the obligor.

CHAPTER 53  
CUSTODY

SUBCHAPTER A  
GENERAL PROVISIONS

§ 5301. Declaration of policy.

The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child, to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and the sharing of

the rights and responsibilities of child rearing by both parents and continuing contact of the child or children with grandparents when a parent is deceased, divorced or separated.

§ 5302. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Child.” Any unemancipated person under 18 years of age.

“Legal custody.” The legal right to make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious and educational decisions.

“Partial custody.” The right to take possession of a child away from the custodial parent for a certain period of time.

“Physical custody.” The actual physical possession and control of a child.

“Shared custody.” An order awarding shared legal or shared physical custody, or both, of a child in such a way as to assure the child of frequent and continuing contact with and physical access to both parents.

“Visitation.” The right to visit a child. The term does not include the right to remove a child from the custodial parent’s control.

§ 5303. Award of custody, partial custody or visitation.

(a) General rule.--

(1) In making an order for custody or partial custody, the court shall consider the preference of the child as well as any other factor which legitimately impacts the child’s physical, intellectual and emotional well-being.

(2) In making an order for custody, partial custody or visitation to either parent, the court shall consider, among other factors, which parent is more likely to encourage, permit and allow frequent and continuing contact and physical access between the noncustodial parent and the child.

(3) The court shall consider each parent and adult household member’s present and past violent or abusive conduct which may include, but is not limited to, abusive conduct as defined under the act of October 7, 1976 (P.L.1090, No.218), known as the Protection From Abuse Act.

(b) Consideration of criminal conviction.--If a parent has been convicted of or has pleaded guilty or no contest to an offense as set forth below, the court shall consider such criminal conduct and shall determine that the parent does not pose a threat of harm to the child before making an order of custody, partial custody or visitation to that parent:

- (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- (2) 18 Pa.C.S. § 2901 (relating to kidnapping);
- (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);
- (4) 18 Pa.C.S. § 3121 (relating to rape);
- (5) 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault);
- (6) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);
- (7) 18 Pa.C.S. § 3124.1 (relating to sexual assault);
- (8) 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);
- (9) 18 Pa.C.S. § 3126 (relating to indecent assault);
- (10) 18 Pa.C.S. § 3127 (relating to indecent exposure);

- (11) 18 Pa.C.S. § 4302 (relating to incest);
- (12) 18 Pa.C.S. § 4304 (relating to endangering welfare of children);
- (13) 18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses); or
- (14) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(b.1) Consideration of criminal charge.--

(1) A parent who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) of the charge filed against the other parent for an offense listed in paragraph (2) may move for a temporary custody order or to modify an existing custody, partial custody or visitation order. The temporary custody or modification hearing shall be scheduled expeditiously.

(2) In evaluating any request for temporary custody or modification of a custody, partial custody or visitation order, the court shall consider whether the parent who is or has been charged with an offense listed below poses a risk of harm to the child:

- (i) 18 Pa.C.S. Ch. 25;
- (ii) 18 Pa.C.S. § 2702 (relating to aggravated assault);
- (iii) 18 Pa.C.S. § 2706 (relating to terroristic threats);
- (iv) 18 Pa.C.S. § 2709.1 (relating to stalking);
- (v) 18 Pa.C.S. § 2901;
- (vi) 18 Pa.C.S. § 2902;
- (vii) 18 Pa.C.S. § 2903 (relating to false imprisonment);
- (viii) 18 Pa.C.S. § 3121;
- (ix) 18 Pa.C.S. § 3122.1;
- (x) 18 Pa.C.S. § 3123;
- (xi) 18 Pa.C.S. § 3124.1;
- (xii) 18 Pa.C.S. § 3125;
- (xiii) 18 Pa.C.S. § 3126;
- (xiv) 18 Pa.C.S. § 3127;
- (xv) 18 Pa.C.S. § 3301 (relating to arson and related offenses);
- (xvi) 18 Pa.C.S. § 4302;
- (xvii) 18 Pa.C.S. § 4304;
- (xviii) 18 Pa.C.S. § 6312; and
- (xix) 23 Pa.C.S. § 6114 (relating to contempt for violation of order or agreement).

(3) Failure to apply for information under 42 Pa.C.S. § 1904 or to act under this subsection shall not prejudice any parent in a custody or visitation proceeding.

(b.2) Parent convicted of murder.--No court shall award custody, partial custody or visitation to a parent who has been convicted of murder under 18 Pa.C.S. § 2502(a) (relating to murder of the first degree) of the other parent of the child who is the subject of the order, unless the child is of suitable age and consents to the order.

(c) Counseling.--In making a determination to award custody, partial custody or visitation pursuant to subsection (b), the court shall appoint a qualified professional to provide counseling to an offending parent described in subsection (b) and shall take testimony from that professional regarding the provision of such counseling prior to issuing any order of custody, partial custody or visitation. Counseling, required in accordance with this subsection, shall include a program of treatment or individual

therapy designed to rehabilitate a parent which addresses, but is not limited to, issues regarding physical and sexual abuse, domestic violence, the psychology of the offender and the effects of abuse on the victim. If the court awards custody, partial custody or visitation to an offending parent described in subsection (b), the court may require subsequent periodic counseling and reports on the rehabilitation of the offending parent and the well-being of the child following an order relating to custody, partial custody or visitation. If, upon review of a subsequent report or reports, the court determines that the offending parent poses a threat of harm to the child, the court may schedule a hearing and modify the order of custody or visitation to protect the well-being of the child.

(d) Sole custody.--The court shall award sole custody when it is in the best interest of the child.

§ 5304. Award of shared custody.

An order for shared custody may be awarded by the court when it is in the best interest of the child:

- (1) upon application of one or both parents;
- (2) when the parties have agreed to an award of shared custody; or
- (3) in the discretion of the court.

§ 5305. Counseling.

(a) General rule.--The court may require the parents to attend counseling sessions and may consider the recommendations of the counselors prior to awarding sole or shared custody. These counseling sessions may include, but shall not be limited to, discussions of the responsibilities and decisionmaking arrangements involved in both sole and shared custody and the suitability of each arrangement to the capabilities of each parent or both parents.

(b) Temporary custody.--The court may temporarily award custody to either parent or both parents pending resolution of any counseling.

(c) Report.--The court may require the counselor to submit a report if the court desires and within such reasonable time as the court determines.

§ 5306. Plan for implementation of custody order.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of any custody order made under this subchapter. Upon the request of either parent or the court, the domestic relations section of the court or other party or agency approved by the court shall assist in the formulation and implementation of the plan.

§ 5307. Denial of custody under agreement or plan.

When the court declines to enter an order awarding custody either as agreed to by the parents or under the plan developed by the parents, the court shall state its reasons for denial on the record.

§ 5308. Removal of party or child from jurisdiction.

If either party intends to or does remove himself or the child from this Commonwealth after a custody order has been made, the court, on its own motion or upon motion of either party, may review the existing custody order.

§ 5309. Access to records and information.

(a) General rule.--Except as provided in subsections (b) and (c), each parent shall be provided access to all the medical, dental, religious or school records of the child, the residence address of the child and of the other parent and any other information that the court deems necessary.

(b) Court determination not to release information.--The court, in its discretion, may determine not to release any part or parts of the information in this section but in doing so must state its reason for denial on the record.

(c) Nondisclosure of confidential information.--The court shall not order that the address of a shelter for battered spouses and their dependent children or otherwise confidential information of a domestic violence counselor be disclosed to the defendant or his counsel or any party to the proceedings.

§ 5310. Modification of existing custody orders.

Except as provided in 51 Pa.C.S. § 4109 (relating to child custody proceedings during military deployment), any order for the custody of the child of a marriage entered by a court in this Commonwealth or any state may, subject to the jurisdictional requirements set forth in Chapter 54 (relating to uniform child custody jurisdiction and enforcement), be modified at any time to an order of shared custody in accordance with this subchapter.

§ 5311. When parent deceased.

If a parent of an unmarried child is deceased, the parents or grandparents of the deceased parent may be granted reasonable partial custody or visitation rights, or both, to the unmarried child by the court upon a finding that partial custody or visitation rights, or both, would be in the best interest of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.

§ 5312. When parents' marriage is dissolved or parents are separated.

In all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter or when parents have been separated for six months or more, the court may, upon application of the parent or grandparent of a party, grant reasonable partial custody or visitation rights, or both, to the unmarried child if it finds that visitation rights or partial custody, or both, would be in the best interest of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

§ 5313. When grandparents may petition.

(a) Partial custody and visitation.--If an unmarried child has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently

removed from the home by his parents, the grandparents or great-grandparents may petition the court for an order granting them reasonable partial custody or visitation rights, or both, to the child. The court shall grant the petition if it finds that visitation rights would be in the best interest of the child and would not interfere with the parent-child relationship.

(b) Physical and legal custody.--A grandparent has standing to bring a petition for physical and legal custody of a grandchild. If it is in the best interest of the child not to be in the custody of either parent and if it is in the best interest of the child to be in the custody of the grandparent, the court may award physical and legal custody to the grandparent. This subsection applies to a grandparent:

- (1) who has genuine care and concern for the child;
- (2) whose relationship with the child began with the consent of a parent of the child or pursuant to an order of court; and
- (3) who for 12 months has assumed the role and responsibilities of the child's parent, providing for the physical, emotional and social needs of the child, or who assumes the responsibility for a child who has been determined to be a dependent child pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who assumes or deems it necessary to assume responsibility for a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or mental illness. The court may issue a temporary order pursuant to this section.

§ 5314. Exception for adopted children.

Sections 5311 (relating to when parent deceased), 5312 (relating to when parents' marriage is dissolved or parents are separated) and 5313 (relating to when child has resided with grandparents) shall not apply if the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption.

§ 5315. Court-appointed child custody health care or behavioral health practitioners.

No party to a child custody matter in which the court has appointed a licensed health care or behavioral health practitioner to assist the court by conducting an examination or evaluation of the parties involved or making a recommendation concerning a child custody agreement or order may be permitted to file a complaint against the practitioner with the practitioner's State licensing board prior to the final agreement or order being issued and for 60 days thereafter. As used in this section, "licensed health care or behavioral health practitioner" means a person who is licensed, certified, accredited or otherwise regulated by the Commonwealth to provide health care or behavioral health services.]

**Section 2.** Title 23 is amended by adding a chapter to read:

CHAPTER 53  
CHILD CUSTODY

Sec.

5321. Scope of chapter.

5322. Definitions.

5323. Award of custody.

5324. Standing for any form of physical custody or legal custody.

5325. Standing for partial physical custody and supervised physical custody.

5326. Effect of adoption.

5327. Presumption in cases concerning primary physical custody.

5328. Factors to consider when awarding custody.

5329. Consideration of criminal conviction.

5330. Consideration of criminal charge.

5331. Parenting plan.

5332. Informational programs.

5333. Counseling as part of order.

5334. Guardian ad litem for child.

5335. Counsel for child.

5336. Access to records and information.

5337. Relocation.

5338. Modification of existing order.

5339. Award of counsel fees, costs and expenses.

5340. Court-appointed child custody health care or behavioral health practitioners.

§ 5321. Scope of chapter.

This chapter applies to disputes relating to child custody matters.

§ 5322. Definitions.

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

“Abuse.” As defined in section 6102 (relating to definitions).

“Adult.” An individual 18 years of age or older.

“Agency.” Any organization, society, institution, court facility or other entity which provides for the care of a child. The term does not include a county children and youth social service agency.

“Child.” An unemancipated individual under 18 years of age.

“Legal custody.” The right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.

“Parental duties.” Includes meeting the physical, emotional and social needs of the child.

“Partial physical custody.” The right to assume physical custody of the child for less than a majority of the time.

“Physical custody.” The actual physical possession and control of a child.

“Primary physical custody.” The right to assume physical custody of the child for the majority of time.

“Relocation.” A change in a residence of the child which significantly impairs the ability of a nonrelocating party to exercise custodial rights.

“Shared legal custody.” The right of more than one individual to legal custody of the child.

“Shared physical custody.” The right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child.

“Sole legal custody.” The right of one individual to exclusive legal custody of the child.

“Sole physical custody.” The right of one individual to exclusive physical custody of the child.

“Supervised physical custody.” Custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

(b) Other law.--In a statutory provision other than in this chapter, when the term “visitation” is used in reference to child custody, the term may be construed to mean:

- (1) partial physical custody;
- (2) shared physical custody; or
- (3) supervised physical custody.

§ 5323. Award of custody.

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

- (1) Shared physical custody.
- (2) Primary physical custody.
- (3) Partial physical custody.
- (4) Sole physical custody.
- (5) Supervised physical custody.
- (6) Shared legal custody.
- (7) Sole legal custody.

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

(c) Notice.--Any custody order shall include notice of a party’s obligations under section 5337 (relating to relocation).

(d) Reasons for award.--The court shall delineate the reasons for its decision on the record in open court or in a written opinion or order.

(e) Safety conditions.--After considering the factors under section 5328(a)(2), if the court finds that there is an ongoing risk of harm to the child or an abused party and awards any form of custody to a party who committed the abuse or who has a household member who committed the abuse, the court shall include in the custody order safety conditions designed to protect the child or the abused party.

(f) Enforcement.--In awarding custody, the court shall specify the terms and conditions of the award in sufficient detail to enable a party to enforce the court order through law enforcement authorities.

(g) Contempt for noncompliance with any custody order.--

(1) A party who willfully fails to comply with any custody order may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:

(i) Imprisonment for a period of not more than six months.

(ii) A fine of not more than \$500.

(iii) Probation for a period of not more than six months.

(iv) An order for nonrenewal, suspension or denial of operating privilege under section 4355 (relating to denial or suspension of licenses).

(v) Counsel fees and costs.

(2) An order committing an individual to jail under this section shall specify the condition which, when fulfilled, will result in the release of that individual.

(h) Parties in same residence.--Parties living separate and apart in the same residence may seek relief under this chapter, but any custody order made under such a circumstance shall be effective only upon:

(1) one party physically vacating the residence; or

(2) an order awarding one party exclusive possession of the residence.

§ 5324. Standing for any form of physical custody or legal custody.

The following individuals may file an action under this chapter for any form of physical custody or legal custody:

(1) A parent of the child.

(2) A person who stands in loco parentis to the child.

(3) A grandparent of the child who is not in loco parentis to the child:

(i) whose relationship with the child began either with the consent of a parent of the child or under a court order;

(ii) who assumes or is willing to assume responsibility for the child; and

(iii) when one of the following conditions is met:

(A) the child has been determined to be a dependent child under 42 Pa.C.S. Ch. 63 (relating to juvenile matters);

(B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or

(C) the child has for a period of at least 12 consecutive months resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

§ 5325. Standing for partial physical custody and supervised physical custody.

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

(1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;

(2) where the parents of the child have been separated for a period of at least six months or have commenced and continued a proceeding to dissolve their marriage; or

(3) when the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, an action must be filed within six months after the removal of the child from the home.

§ 5326. Effect of adoption.

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

§ 5327. Presumption in cases concerning primary physical custody.

(a) Between parents.--In any action regarding the custody of the child between the parents of the child, there shall be no presumption that custody should be awarded to a particular parent.

(b) Between a parent and third party.--In any action regarding the custody of the child between a parent of the child and a nonparent, there shall be a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.

(c) Between third parties.--In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party.

§ 5328. Factors to consider when awarding custody.

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

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

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

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

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

(5) The availability of extended family.

(6) The child's sibling relationships.

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

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

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

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

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

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

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

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

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

(16) Any other relevant factor.

(b) Gender neutral.--In making a determination under subsection (a), no party shall receive preference based upon gender in any award granted under this chapter.

(c) Grandparents and great-grandparents.--

(1) In ordering partial physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2) (relating to standing for partial physical custody and supervised physical custody), the court shall consider the following:

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

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

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

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

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

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

#### § 5329. Consideration of criminal conviction.

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

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

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

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

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

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

18 Pa.C.S. § 2902 (relating to unlawful restraint).  
18 Pa.C.S. § 2903 (relating to false imprisonment).  
18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure).  
18 Pa.C.S. § 3121 (relating to rape).  
18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).  
18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).  
18 Pa.C.S. § 3124.1 (relating to sexual assault).  
18 Pa.C.S. § 3125 (relating to aggravated indecent assault).  
18 Pa.C.S. § 3126 (relating to indecent assault).  
18 Pa.C.S. § 3127 (relating to indecent exposure).  
18 Pa.C.S. § 3129 (relating to sexual intercourse with animal).  
18 Pa.C.S. § 3130 (relating to conduct relating to sex offenders).  
18 Pa.C.S. § 3301 (relating to arson and related offenses).  
18 Pa.C.S. § 4302 (relating to incest).  
18 Pa.C.S. § 4303 (relating to concealing death of child).  
18 Pa.C.S. § 4304 (relating to endangering welfare of children).  
18 Pa.C.S. § 4305 (relating to dealing in infant children).  
18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses).  
18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other sexual materials and performances).  
18 Pa.C.S. § 6301 (relating to corruption of minors).  
18 Pa.C.S. § 6312 (relating to sexual abuse of children).  
18 Pa.C.S. § 6318 (relating to unlawful contact with minor).  
18 Pa.C.S. § 6320 (relating to sexual exploitation of children).  
Section 6114 (relating to contempt for violation of order or agreement).  
The former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance).  
75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs).  
Section 13(a)(1) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, to the extent that it prohibits the manufacture, sale or delivery, holding, offering for sale or possession of any controlled substance or other drug or device.  
(b) Parent convicted of murder.--No court shall award custody, partial custody or supervised physical custody to a parent who has been convicted of murder under 18 Pa.C.S. § 2502(a) (relating to murder) of the other parent of the child who is the subject of the order unless the child is of suitable age and consents to the order.  
(c) Initial evaluation.--The court shall provide for an evaluation to determine whether:  
(1) the party or household member who committed an offense under subsection (a) poses a threat to the child; and  
(2) counseling is necessary for that party or household member.  
(d) Counseling.--  
(1) Where the court determines under subsection (c) that counseling is necessary, it shall appoint a qualified professional specializing in treatment relating to the particular offense to provide counseling to the offending individual.

(2) Counseling may include a program of treatment or individual therapy designed to rehabilitate the offending individual which addresses, but is not limited to, issues regarding physical and sexual abuse, the psychology of the offender and the effects of the offense on the victim.

(e) Subsequent evaluation.--

(1) At any time during or subsequent to the counseling under subsection (d), the court may require another evaluation to determine whether further counseling is necessary.

(2) If the court awards custody to a party who committed an offense under subsection (a) or who shares a household with an individual who committed an offense under subsection (a), the court may require subsequent evaluations on the rehabilitation of the offending individual and the well-being of the child subsequent to the order. If upon review of a subsequent evaluation the court determines that the offending individual poses a threat of physical, emotional or psychological harm to the child, the court may schedule a hearing to modify the custody order.

(f) Costs.--The court may order a party to pay all or part of the costs of the counseling and evaluations under this section.

§ 5330. Consideration of criminal charge.

(a) Expedited hearing.--A party who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) or otherwise about a charge filed against the other party for an offense listed under section 5329(a) (relating to consideration of criminal conviction) may move for a temporary custody order or modification of an existing custody order. The court shall hold the hearing under this subsection in an expeditious manner.

(b) Risk of harm.--In evaluating any request under subsection (a), the court shall consider whether the party who is or has been charged with an offense set forth in section 5329(a) poses a risk of physical, emotional or psychological harm to the child.

(c) No prejudice.--Failure to either apply for information under 42 Pa.C.S. § 1904 or act under this section shall not prejudice any party in a custody proceeding.

§ 5331. Parenting plan.

(a) Purpose.--In a contested custody proceeding, the court may require the parties to submit parenting plans for the care and custody of the child to aid the court in resolving the custody dispute. A parenting plan and the position of a party as set forth in that parenting plan shall not be admissible as evidence by another party.

(b) Contents.--A parenting plan shall include the following:

(1) The schedule for personal care and control of the child, including parenting time, holidays and vacations.

(2) The education and religious involvement, if any, of the child.

(3) The health care of the child.

(4) Child-care arrangements.

(5) Transportation arrangements.

(6) A procedure by which proposed changes, disputes and alleged breaches of the custody order may be adjudicated or otherwise resolved through mediation, arbitration or other means.

(7) Any matter specified by the court.

(8) Any other matter that serves the best interest of the child.

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

CAPTION  
PARENTING PLAN

This parenting plan involves the following child/children:

<u>Child's Name</u>	<u>Age</u>	<u>Where does this child live?</u>
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....

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

<u>Child's Name</u>	<u>Age</u>	<u>Where does this child live?</u>
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....

Legal Custody (who makes decisions about certain things):

Circle one

- Diet..... Both parties decide together / Plaintiff / Defendant
- Religion..... Both parties decide together / Plaintiff / Defendant
- Medical Care... Both parties decide together / Plaintiff / Defendant
- Mental Health Care... Both parties decide together / Plaintiff / Defendant
- Discipline..... Both parents decide together / Plaintiff / Defendant
- Choice of School.... Both parents decide together / Plaintiff / Defendant
- Choice of Study..... Both parents decide together / Plaintiff / Defendant
- School Activities... Both parents decide together / Plaintiff / Defendant
- Sports Activities... Both parents decide together / Plaintiff / Defendant
- Additional items... Both parents decide together / Plaintiff / Defendant

Explain what process you will use to make decisions?

(For example, the parent confronted with or anticipating the choice will call the other parent when the choice presents itself, and the other parent must agree or disagree within 24 hours of any deadline)

.....

Physical Custody (where the child/children live)

The child's/children's residence is with.....

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

Sunday Monday Tuesday Wednesday Thursday Friday Saturday  
.....

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

Drop-Off

Where.....

When.....  
.....

Pick-Up

Where .....

When .....  
.....

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

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

HOLIDAYS

Where will the child/children stay?

<u>HOLIDAY</u>	<u>YEAR A</u>	<u>YEAR B</u>	<u>EVERY YEAR</u>
<u>Martin Luther King Day</u>	.....	.....	.....
<u>President's Day</u>	.....	.....	.....
<u>Easter</u>	.....	.....	.....
<u>Memorial Day</u>	.....	.....	.....
<u>Fourth of July</u>	.....	.....	.....
<u>Labor Day</u>	.....	.....	.....
<u>Yom Kippur</u>	.....	.....	.....
<u>Rosh Hashanah</u>	.....	.....	.....
<u>Thanksgiving</u>	.....	.....	.....
<u>Vacation after Thanksgiving</u>	.....	.....	.....
<u>Christmas Vacation</u>	.....	.....	.....
<u>Kwanzaa</u>	.....	.....	.....
<u>New Year's Eve/Day</u>	.....	.....	.....
<u>Spring Vacation</u>	.....	.....	.....
<u>Easter Sunday</u>	.....	.....	.....
<u>Child's Birthday</u>	.....	.....	.....
<u>Mother's Day</u>	.....	.....	.....
<u>Father's Day</u>	.....	.....	.....
<u>Other</u>	.....	.....	.....
<u>Other</u>	.....	.....	.....
<u>Other</u>	.....	.....	.....

Summer Vacation Plans

.....  
.....

Special Activities or School Activities

<u>Child's Name</u>	<u>Activity</u>	<u>Will both of you attend?</u> <u>If not, which of you will attend?</u>
.....	.....	.....
.....	.....	.....
.....	.....	.....

Temporary changes to this parenting schedule

From time to time, one of you might want or need to rearrange the parenting time schedule due to work, family or other events. You can attempt to agree on these changes.

If you cannot agree, the parent receiving the request will make the final decision.

The parent asking for the change will ask.....in person.....by letter/mail.....by phone

No later than

....12 hours..... 24 hours.... 1 week..... 1 month

The parent being asked for a change will reply

.... in person..... by letter/mail..... by phone

No later than

..... 12 hours..... 24 hours..... 1 week..... 1 month

May parents contact one another?.....

When the child/children is/are with one of you, how may they contact the other parent?.....

.....

When and how may .....contact the child?

.....

In the event that proposed changes, disputes or alleged breaches of this parenting plan and custody order are necessary or desired, the parties agree that such changes will be addressed by the following method (specify method of arbitration, mediation, court action, etc.):

.....

The following matter or matters as specified by the court:

.....

Other (Anything else you want to agree on)

.....

.....

Date.....

.....

Signature of Mother

Date.....

.....

Signature of Father

Date.....

.....

Signature of Witness

§ 5332. Informational programs.

(a) Attendance.--The court may direct the parties to attend informational programs concerning parental duties.

(b) Process not delayed.--Subsequent proceedings and the entry of any order or decree shall not be delayed because of the lack of participation in any informational program by one of the parties.

(c) Costs.--The court may order a party to pay all or part of the costs of the informational programs under this section.

§ 5333. Counseling as part of order.

(a) Attendance.--The court may, as part of a custody order, require the parties to attend counseling sessions.

(b) Abuse.--In situations involving abuse, the court may order individual counseling for the abuser but may not order the parties to attend joint counseling.

(c) Verification.--Each party's participation in the counseling sessions shall be verified by the counselor.

(d) Costs.--The court may order a party to pay all or part of the costs of the counseling sessions under this section.

§ 5334. Guardian ad litem for child.

(a) Appointment.--The court may on its own motion or the motion of a party appoint a guardian ad litem to represent the child in the action. The court may assess the cost upon the parties or any of them or as otherwise provided by law. The guardian ad litem must be an attorney at law.

(b) Powers and duties.--The guardian ad litem shall be charged with representation of the legal interests and the best interests of the child during the proceedings and shall do all of the following:

(1) If appropriate to the child's age and maturity, meet with the child as soon as possible following the appointment, and on a regular basis thereafter.

(2) On a timely basis, be given access to relevant court records, reports of examination of the parents or other custodian of the child and medical, psychological and school records.

(3) Participate in all proceedings.

(4) Conduct such further investigation necessary to ascertain relevant facts for presentation to the court.

(5) Interview potential witnesses, including the child's parents and caretakers, if any. The guardian ad litem may examine and cross-examine witnesses and present witnesses and evidence necessary to protect the best interests of the child.

(6) Make specific recommendations in a written report to the court relating to the best interests of the child, including any services necessary to address the child's needs and safety. The court shall make the written report part of the record so that it may be reviewed by the parties. The parties may file with the court written comments regarding the contents of the report. The comments filed by the parties shall also become part of the record.

(7) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition and emotional condition.

(8) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court. A difference between the child's wishes under this paragraph and the recommendations under paragraph (6) shall not be considered a conflict of interest for the guardian ad litem.

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

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

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

(d) Evidence subject to examination.--A guardian ad litem may not testify except as authorized by Rule 3.7 of the Rules of Professional Conduct, but may make legal argument based on relevant evidence that shall be subject to examination by the parties.

(e) Costs.--The court may order a party to pay all or part of the costs of appointing a guardian ad litem under this section.

#### § 5335. Counsel for child.

(a) Appointment.--The court may appoint counsel to represent the child if the court determines that the appointment will assist in resolving the issues in the custody proceeding. If a child has legal counsel and a guardian ad litem, counsel shall represent the legal interests of the child and the guardian ad litem shall represent the best interests of the child.

(b) Abuse.--Substantial allegations of abuse of the child constitute a reasonable basis for appointing counsel for the child.

(c) Not subject to examination.--Counsel appointed by the court for the child shall not be subject to examination unless such counsel testifies in the matter.

(d) Costs.--The court may order a party to pay all or part of the costs of appointing counsel for the child under this section.

#### § 5336. Access to records and information.

(a) General rule.--Except as provided in subsections (b) and (c):

(1) A party granted sole or shared legal custody under section 5323 (relating to award of custody) shall be provided access to:

(i) the medical, dental, religious and school records of the child;

(ii) the address of the child and any other party; and

(iii) any other information that the court deems necessary or proper.

(2) Access to any records and information pertaining to the child may not be denied solely based upon a parent's physical custody schedule.

(3) Upon request, a parent, party or entity possessing any information set forth in paragraph (1) shall provide it to any party granted sole or shared legal custody.

(b) Nondisclosure of confidential information.--The court shall not order the disclosure of any of the following information to any parent or party granted custody:

(1) The address of a victim of abuse.

(2) Confidential information from an abuse counselor or shelter.

(3) Information protected under Chapter 67 (relating to domestic and sexual violence victim address confidentiality).

(4) Information independently protected from disclosure by the child's right to confidentiality under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, or any other statute.

(c) Other information.--The court may determine not to release information set forth in subsection (a), in which case it shall state the reason for its denial on the record.

§ 5337. Relocation.

(a) Applicability.--This section applies to any proposed relocation.

(b) General rule.--No relocation shall occur unless:

(1) every individual who has custody rights to the child consents to the proposed relocation; or

(2) the court approves the proposed relocation.

(c) Notice.--

(1) The party proposing the relocation shall notify every other individual who has custody rights to the child.

(2) Notice, sent by certified mail, return receipt requested, shall be given no later than:

(i) the 60th day before the date of the proposed relocation; or

(ii) the tenth day after the date that the individual knows of the relocation, if:

(A) the individual did not know and could not reasonably have known of the relocation in sufficient time to comply with the 60-day notice; and

(B) it is not reasonably possible to delay the date of relocation so as to comply with the 60-day notice.

(3) Except as provided by section 5336 (relating to access to records and information), the following information, if available, must be included with the notice of the proposed relocation:

(i) The address of the intended new residence.

(ii) The mailing address, if not the same as the address of the intended new residence.

(iii) Names and ages of the individuals in the new residence, including individuals who intend to live in the new residence.

(iv) The home telephone number of the intended new residence, if available.

(v) The name of the new school district and school.

(vi) The date of the proposed relocation.

(vii) The reasons for the proposed relocation.

(viii) A proposal for a revised custody schedule.

(ix) Any other information which the party proposing the relocation deems appropriate.

(x) A counter-affidavit as provided under subsection (d)(1) which can be used to object to the proposed relocation and the modification of a custody order.

(xi) A warning to the nonrelocating party that if the nonrelocating party does not file with the court an objection to the proposed relocation within 30 days after

receipt of the notice, that party shall be foreclosed from objecting to the relocation.

(4) If any of the information set forth in paragraph (3) is not known when the notice is sent but is later made known to the party proposing the relocation, then that party shall promptly inform every individual who received notice under this subsection.

(d) Objection to proposed relocation.--

(1) A party entitled to receive notice may file with the court an objection to the proposed relocation and seek a temporary or permanent order to prevent the relocation. The nonrelocating party shall have the opportunity to indicate whether he objects to relocation or not, and whether he objects to modification of the custody order or not. If the party objects to either relocation or modification of the custody order, a hearing shall be held as provided in subsection (g)(1). The objection shall be made by completing and returning to the court a counter-affidavit, which shall be verified subject to penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), in substantially the following form:

COUNTER-AFFIDAVIT REGARDING RELOCATION

This proposal of relocation involves the following child/children:

<u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
.....	.....	.....
<u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
.....	.....	.....
<u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
.....	.....	.....

I have received a notice of proposed relocation and

1. .... I do not object to the relocation and I do not object to the modification of the custody order consistent with the proposal for revised custody schedule as attached to the notice.

2. .... I do not object to the relocation, but I do object to modification of the custody order, and I request that a hearing be scheduled:

a. .... Prior to allowing (name of child/children) to relocate.

b. .... After the child/children relocate.

3. .... I do object to the relocation and I do object to the modification of the custody order, and I further request that a hearing be held on both matters prior to the relocation taking place.

I understand that in addition to checking (2) or (3) above, I must also file this notice with the court in writing and serve it on the other party by certified mail, return receipt requested. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I shall be foreclosed from objecting to the relocation.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

.....

(2) An objection made under this subsection shall be filed with the court within 30 days of receipt of the proposed relocation notice, and served on the other party by certified mail, return receipt requested.

(3) If notice of the proposed relocation has been properly given and no objection to the proposed relocation has been filed in court, then it shall be presumed that the nonrelocating party has consented to the proposed relocation.

(4) If a party who has been given proper notice does not file with the court an objection to the relocation within 30 days after receipt of the notice but later petitions the court for review of the custodial arrangements, the court shall not accept testimony challenging the relocation.

(e) Confirmation of relocation.--If no objection to the proposed relocation is filed under subsection (d), the party proposing the relocation shall file the following with the court prior to the relocation:

(1) an affidavit stating that the party provided notice to every individual entitled to notice, the time to file an objection to the proposed relocation has passed and no individual entitled to receive notice has filed an objection to the proposed relocation;

(2) proof that proper notice was given in the form of a return receipt with the signature of the addressee and the full notice that was sent to the addressee;

(3) a petition to confirm the relocation and modify any existing custody order; and

(4) a proposed order containing the information set forth in subsection (c)(3).

(f) Modification of custody order.--If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party both has no objection to the proposed relocation and no objection to the modification of the custody order consistent with the proposal for revised custody schedule, the court may modify the existing custody order by approving the proposal for revised custody schedule submitted under section 5337(c)(viii), and shall specify the method by which its future modification can be made if desired by either party. If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party objects either to the proposed relocation or to the modification of the custody order consistent with the proposal for revised custody schedule, the court shall modify the existing custody order only after holding a hearing to establish the terms and conditions of the order pursuant to the relocation indicating the rights, if any, of the nonrelocating parties.

(g) Hearing.--

(1) Except as set forth in paragraph (3), the court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before the relocation occurs.

(2) Except as set forth in paragraph (3), the court may, on its own motion, hold an expedited full hearing on the proposed relocation before the relocation occurs.

(3) Notwithstanding paragraphs (1) and (2), if the court finds that exigent circumstances exist, the court may approve the relocation pending an expedited full hearing.

(4) If the court approves the proposed relocation, it shall:

(i) modify any existing custody order; or

(ii) establish the terms and conditions of a custody order.

(h) Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

(1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

(6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

(7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.

(10) Any other factor affecting the best interest of the child.

(i) Burden of proof.--

(1) The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection (h).

(2) Each party has the burden of establishing the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.

(j) Failure to provide reasonable notice.--The court may consider a failure to provide reasonable notice of a proposed relocation as:

(1) a factor in making a determination regarding the relocation;

(2) a factor in determining whether custody rights should be modified;

(3) a basis for ordering the return of the child to the nonrelocating party if the relocation has occurred without reasonable notice;

(4) sufficient cause to order the party proposing the relocation to pay reasonable expenses and counsel fees incurred by the party objecting to the relocation; and

(5) a ground for contempt and the imposition of sanctions against the party proposing the relocation.

(k) Mitigation.--Any consideration of a failure to provide reasonable notice under subsection (i) shall be subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.

(l) Effect of relocation prior to hearing.--If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.

§ 5338. Modification of existing order.

(a) Best interest of the child.--Upon petition, a court may modify a custody order to serve the best interest of the child.

(b) Applicability.--This section shall apply to any custody order entered by a court of this Commonwealth or any other state subject to the jurisdictional requirements set forth in Chapter 54 (relating to uniform child custody jurisdiction and enforcement).

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

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

§ 5340. Court-appointed child custody health care or behavioral health practitioners.

No party to a child custody matter in which the court has appointed a licensed health care or behavioral health practitioner to assist the court by conducting an examination or evaluation of the parties involved or making a recommendation concerning a child custody agreement or order may be permitted to file a complaint against the practitioner with the practitioner's State licensing board prior to the final agreement or order being issued and for 60 days thereafter. As used in this section, "licensed health care or behavioral health practitioner" means a person who is licensed, certified, accredited or otherwise regulated by the Commonwealth to provide health care or behavioral health services.

**Section 3.** Section 1904(b), (c) and (h) of Title 42 are amended to read:

§ 1904. Availability of criminal charge information in child custody proceedings.

\* \* \*

(b) Criminal charges enumerated.--The criminal charge information that shall be available on the information system shall be limited to the offenses listed in 23 Pa.C.S. § [5303(b.1)(2) (relating to award of custody, partial custody or visitation)] 5329(a) (relating to consideration of criminal conviction).

(c) Application for access to criminal charge information.--To obtain information about charges covered in 23 Pa.C.S. § [5303(b.1)(2)] 5329(a), a parent who has been awarded custody[, ] or partial custody [or visitation] or who is a party to a custody

proceeding must file an application for access to the information with the office of the prothonotary in the county where the proceeding or order was filed.

(1) A person who knowingly gives false information with the intent to gain information provided for under this section commits an offense under 18 Pa.C.S. § 4904(a) (relating to unsworn falsification to authorities).

(2) The application must be filed with the prothonotary by one of the following methods:

(i) In person, at the office of the prothonotary, by the parent who is filing the application. The applicant must have a valid form of photoidentification available for the inspection of the prothonotary.

(ii) By mailing a notarized application using first class mail.

(iii) By including the application with the original complaint, initial response or any other pleading or motion filed with the prothonotary.

(3) The Administrative Office shall develop the application for access to the criminal charge information system. The following information shall be included in the application:

(i) Docket number of original court filing.

(ii) Date of filing.

(iii) Date of birth of all children involved in the custody proceeding or order.

(iv) A personal access code.

(v) A notice to the parent that additional information relating to criminal history record information is available, as provided for in 18 Pa.C.S. Ch. 91 (relating to criminal history record information).

(vi) A statement verifying that:

(A) the person who is filing for access to the criminal charge information system is the actual person listed on the application;

(B) to the best of the applicant's knowledge and belief, all the information included in the application is true and correct; and

(C) the applicant is a party to the custody proceeding or order that is listed on the application.

(vii) A warning as to the penalty under 18 Pa.C.S. § 4904.

(viii) Any additional information that it is determined to be necessary to expedite the verification of the application and to provide access to the system, as determined by the Administrative Office.

(4) Applications shall be made available through county prothonotaries.

\* \* \*

(h) Information available to parent.--

(1) After applying and qualifying to obtain the criminal charge information provided by the system, a parent may request information by telephone as to whether the other parent has been charged with any offense listed in 23 Pa.C.S. § [5303(b.1)(2)] 5329(a).

(2) The parent shall also be entitled to criminal history record information as provided for in 18 Pa.C.S. Ch. 91, and the parent shall be informed of the availability.

(3) Criminal charge information shall be retained on the system for the period of time as provided for the retention of criminal charges and records under 18 Pa.C.S. Ch. 91 and then only until the youngest child involved in the custody proceeding or

order reaches 18 years of age. At no time shall information be retained on the system beyond what is permitted under 18 Pa.C.S. Ch. 91.

\* \* \*

**Section 4.** A proceeding under the former provisions of 23 Pa.C.S. Ch. 53 which was commenced before the effective date of this section shall be governed by the law in effect at the time the proceeding was initiated.

**Section 5.** This act shall take effect in 60 days.

APPROVED--The 23rd day of November, A.D. 2010.

EDWARD G. RENDELL

**JOINT STATE GOVERNMENT COMMISSION  
COMMENTS TO ACT NO. 112 of 2010**

The Joint State Government Commission and the Advisory Committee on Domestic Relations Law developed comments to the custody provisions, which were originally published in the November 1999 report. After enactment of 2009 House Bill No. 1639 as Act No. 112 of 2010, the applicable comments were revised and finalized.

Comment to § 5322

It is intended that shared legal custody includes consultation on major decisions and reasonable consent of the parties.

Comment to § 5323

Under subsection (a), the court should address both physical and legal custody in any award of custody. Subsection (b) provides for an interim award of special relief in accordance with the Pennsylvania Rule of Civil Procedure No. 1915.13. The explicit sanction of counsel fees and costs in subsection (g)(1)(v) is consistent with 23 Pa.C.S. §§ 3502(e)(7) regarding the sanction for failure to comply with an equitable distribution order and 3703(7) regarding payment of arrearages for alimony and alimony pendente lite. Subsection (h) removes a long-standing obstacle to a party who otherwise has standing to commence a custody action.

Comment to § 5325

*See* § 5328(c).

Comment to § 5328

The factors under subsection (a) are not listed in order of preference. Subsection (a)(6) is intended to include full-blood siblings, half-blood siblings, step-siblings and adoptive siblings.

Comment to § 5331

Subsection (b)(3) is intended to cover such issues as who will take the child to the doctor and how to ensure that the child receives proper medication.

Comment to § 5337

Subsection (c) is not intended to abrogate the expedited hearing process set forth in *Plowman v. Plowman*, 409 Pa. Super. 143, 597 A.2d 701 (1991).

Rule 1930.4 of the Pennsylvania Rules of Civil Procedure governs the service of original process in domestic relations matters.

It is intended that if a party chooses to file under subsection (e), then the party must file all four items listed.

Comment to § 5338

Subsection (a) codifies the standard used in *Karis v. Karis*, 518 Pa. 601, 544 A.2d 1328 (1988), where the Supreme Court held that “a petition for modification of a partial custody to shared custody order requires the court to inquire into the best interest of the child regardless of whether a ‘substantial’ change of circumstances has been shown.” 518 Pa. at 607-8.

## **APPENDIX 2: SELECT DIVORCE AND EQUITABLE DISTRIBUTION LEGISLATION**

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2001 Senate Bill No. 1084 (Printer's No. 1366)

2003 Senate Bill No. 95 (Printer's No. 821)

2003 Senate Bill No. 95 (Printer's No. 1939)



*The following is taken from 2001 Senate Bill No. 1084  
(Printer's No. 1366):*

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, amending and adding provisions relating to divorce.

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

**Section 1.** The definition of "separate and apart" in section 3103 of Title 23 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3103. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

"Separate and apart." [Complete cessation] Cessation of [any and all] cohabitation, whether living in the same residence or not. In the event a complaint in divorce is filed and served, it shall be presumed that the parties commenced to live separate and apart not later than the date that the complaint was served.

\* \* \*

**Section 2.** Title 23 is amended by adding a section to read:

§ 3106. Premarital agreements.

(a) General rule.--The burden of proof to set aside a premarital agreement shall be upon the party alleging the agreement to be unenforceable. A premarital agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

(1) the party did not execute the agreement voluntarily; or

(2) the party, before execution of the agreement:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have an adequate knowledge of the property or financial obligations of the other party.

(b) Void agreements.--Any premarital agreement executed within 60 days prior to the marriage shall be void. Any waiver of this subsection shall be unenforceable.

(c) Definition.--As used in this section, the term “premarital agreement” means an agreement regarding matters within the jurisdiction of the court under this part between prospective spouses made in contemplation of marriage and to be effective upon marriage.

**Section 3.** Section 3301(d) of Title 23 is amended to read:

§ 3301. Grounds for divorce.

\* \* \*

(d) Irretrievable breakdown.--

(1) The court may grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a period of at least [two years] one year and that the marriage is irretrievably broken and the defendant either:

(i) Does not deny the allegations set forth in the affidavit.

(ii) Denies one or more of the allegations set forth in the affidavit but, after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least [two years] one year and that the marriage is irretrievably broken.

(2) If a hearing has been held pursuant to paragraph (1)(ii) and the court determines that there is a reasonable prospect of reconciliation, then the court shall continue the matter for a period not less than 90 days nor more than 120 days unless the parties agree to a period in excess of 120 days. During this period, the court shall require counseling as provided in section 3302 (relating to counseling). If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. If the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.

\* \* \*

**Section 4.** Sections 3323(c) and (d), 3501(a) and 3502(a) of Title 23 are amended and the sections are amended by adding subsections to read:

§ 3323. Decree of court.

\* \* \*

[(c) Bifurcation.--In the event that the court is unable for any reason to determine and dispose of the matters provided for in subsection (b) within 30 days after the report of the master has been filed, it may enter a decree of divorce or annulment. Upon the request of either party and after a hearing, the court may order alimony pendente lite, reasonable counsel fees, costs and expenses and may make a temporary order necessary to protect the interests of the parties pending final disposition of the matters in subsection (b).

(d) Substitution for deceased party.--If one of the parties dies after the decree of divorce has been entered, but prior to the final determination in such proceeding of the property rights and interests of the parties under this part, the personal representative of

the deceased party shall be substituted as a party as provided by law and the action shall proceed.]

(c.1) Bifurcation.--With the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b). In the absence of the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b) if:

(1) at least one year has elapsed since grounds have been established as provided in subsection (g); and

(2) the moving party has demonstrated that:

(i) compelling circumstances for the entry of the decree of divorce or annulment exist; and

(ii) sufficient economic protections have been provided for the other party during the pendency of the disposition of the matters provided for in subsection (b).

(d.1) Death of a party.--In the event one party dies during the course of divorce proceedings, no decree of divorce has been entered and grounds have been established as provided in subsection (g), the parties' economic rights and obligations arising under the marriage shall be determined under this part rather than under 20 Pa.C.S. (relating to decedents, estates and fiduciaries).

\* \* \*

(g) Grounds established.--For purposes of subsections (c.1) and (d.1), grounds are established as follows:

(1) In the case of an action for divorce under section 3301(a) or (b) (relating to grounds for divorce), the court adopts a report of the master or makes its own findings that grounds for divorce exist.

(2) In the case of an action for divorce under section 3301(c), both parties have filed affidavits of consent.

(3) In the case of an action for divorce under section 3301(d), an affidavit has been filed and no counter-affidavit has been filed or, if a counter-affidavit has been filed denying the affidavit's averments, the court determines that the marriage was irretrievably broken and the parties had lived separate and apart for at least one year at the time of the filing of the affidavit.

#### § 3501. Definitions.

(a) General rule.--As used in this chapter, "marital property" means all property acquired by either party during the marriage[, including the increase in value, prior to the date of final separation,] and the increase in value of any nonmarital property acquired pursuant to paragraphs (1) and (3)[, except:] as measured and determined under subsection (a.1). However, marital property does not include:

(1) Property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage.

(2) Property excluded by valid agreement of the parties entered into before, during or after the marriage.

(3) Property acquired by gift, except between spouses, bequest, devise or descent or property acquired in exchange for such nonmarital property.

(4) Property acquired after final separation until the date of divorce, except for property acquired in exchange for marital assets.

(5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the date of final separation.

(6) Veterans' benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958 (Public Law 85-857, 72 Stat. 1229), as amended, except for those benefits received by a veteran where the veteran has waived a portion of his military retirement pay in order to receive veterans' compensation.

(7) Property to the extent to which the property has been mortgaged or otherwise encumbered in good faith for value prior to the date of final separation.

(8) Any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received.

(a.1) Measuring and determining the increase in value of nonmarital property.--The increase in value of any nonmarital property acquired pursuant to subsection (a)(1) and (3) shall be measured from the date of marriage or later acquisition date to either the date of final separation or the date as close to the hearing on equitable distribution as possible, whichever date results in the lesser increase. Any decrease in value of the nonmarital property of a party shall be offset against any increase in value of the nonmarital property of that party. However, a decrease in value of the nonmarital property of a party shall not be offset against any increase in value of the nonmarital property of the other party or against any other marital property subject to equitable division.

\* \* \*

(c) Defined benefit retirement plans.--Notwithstanding subsections (a), (a.1) and (b):

(1) In the case of the marital portion of a defined benefit retirement plan being distributed by means of a deferred distribution, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the total benefit, and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

(2) In the case of the marital portion of a defined benefit retirement plan being distributed by means of an immediate offset, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the accrued benefit as of a date as close to the time of trial as reasonably possible, and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements up to a date as close to the time of trial as reasonably possible except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

§ 3502. Equitable division of marital property.

(a) General rule.--[In] Upon the request of either party in an action for divorce or annulment, the court shall[, upon request of either party,] equitably divide, distribute or assign, in kind or otherwise, the marital property between the parties without regard to marital misconduct in such [proportions] percentages and in such manner as the court deems just after considering all relevant factors[, including:]. The court may consider each marital asset or group of assets independently and apply a different percentage to each marital asset or group of assets. Factors which are relevant to the equitable division of marital property include the following:

- (1) The length of the marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training or increased earning power of the other party.
- (5) The opportunity of each party for future acquisitions of capital assets and income.
- (6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
- (8) The value of the property set apart to each party.
- (9) The standard of living of the parties established during the marriage.
- (10) The economic circumstances of each party[, including Federal, State and local tax ramifications,] at the time the division of property is to become effective.
- (10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
- (10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.
- (11) Whether the party will be serving as the custodian of any dependent minor children.

\* \* \*

(f) Partial distribution.--The court, upon the request of either party, may at any stage of the proceedings enter an order providing for an interim partial distribution or assignment of marital property.

**Section 5.** Sections 3505(d) and 3506 of Title 23 are amended to read:

§ 3505. Disposition of property to defeat obligations.

\* \* \*

(d) Constructive trust for undisclosed assets.--If a party fails to disclose information required by [subsection (b)] general rule of the Supreme Court and in consequence thereof an asset or assets with a fair market value of [\$500] \$1,000 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at

any time petition the court granting the award to declare the creation of a constructive trust as to all undisclosed assets for the benefit of the parties and their minor or dependent children, if any. The party in whose name the assets are held shall be declared the constructive trustee unless the court designates a different trustee, and the trust may include any terms and conditions the court may determine. The court shall grant the petition upon a finding of a failure to disclose the assets as required [under subsection (b)] by general rule of the Supreme Court.

\* \* \*

§ 3506. Statement of reasons for distribution.

In an order made under this chapter for the distribution of property, the court shall set forth the percentage of distribution for each marital asset or group of assets and the reason for the distribution ordered.

**Section 6.** This act shall apply as follows:

(1) The amendment of the definition of “separate and apart” in 23 Pa.C.S. § 3103 shall apply to complaints served before, on or after the effective date of this paragraph.

(2) The addition of 23 Pa.C.S. § 3106 shall apply to premarital agreements executed on or after the effective date of this paragraph.

(3) The amendment of 23 Pa.C.S. § 3301(d) shall apply to final separations which begin on or after the effective date of this paragraph.

(4) The amendment or addition of 23 Pa.C.S. § 3323(c) and (c.1) shall apply to bifurcation proceedings commenced on or after the effective date of this paragraph.

(5) The amendment or addition of 23 Pa.C.S. § 3323(d) and (d.1) shall apply to the death of one of the parties on or after the effective date of this paragraph.

(6) The addition of 23 Pa.C.S. § 3323(g) shall apply to bifurcation proceedings commenced on or after the effective date of this paragraph and cases in which one of the parties dies on or after the effective date of this paragraph. For those cases under 23 Pa.C.S. § 3323(g)(3) where the one-year separation period of 23 Pa.C.S. § 3301(d) is not applicable, the court shall determine that the parties had lived separate and apart for at least two years at the time of the filing of the affidavit.

(7) The amendment or addition of 23 Pa.C.S. § 3501(a)(3) and (a.1) shall apply to all equitable distribution proceedings irrespective of whether the proceeding was commenced before, on or after the effective date of this paragraph.

(8) The amendment of 23 Pa.C.S. § 3501(c) shall apply to all equitable distribution proceedings commenced on or after the effective date of this paragraph.

(9) The amendment or addition of 23 Pa.C.S. § 3502(a) introductory paragraph, (10.1) and (10.2) shall apply to all equitable distribution proceedings irrespective of whether the proceeding was commenced before, on or after the effective date of this paragraph.

(10) The addition of 23 Pa.C.S. § 3502(f) shall apply to all divorce proceedings irrespective of whether the action was commenced before, on or after the effective date of this paragraph.

(11) The amendment of 23 Pa.C.S. § 3505(d) shall apply to all equitable distribution proceedings irrespective of whether the proceeding was commenced before, on or after the effective date of this paragraph.

(12) The amendment of 23 Pa.C.S. § 3506 shall apply to all orders made on or after the effective date of this paragraph.

**Section 7.** This act shall take effect as follows:

- (1) The addition of 23 Pa.C.S. § 3106 shall take effect in six months.
- (2) Section 6(2) of this act shall take effect in six months.
- (3) The remainder of this act shall take effect in 60 days.



*The following is taken from 2003 Senate Bill No. 95  
(Printer's No. 821):<sup>69</sup>*

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, ~~amending and adding provisions relating to divorce.~~ FURTHER DEFINING "SEPARATE AND APART" FOR PURPOSES OF DIVORCE; PROVIDING FOR PREMARITAL AGREEMENTS; FURTHER PROVIDING FOR DECREE OF COURT IN ACTIONS FOR DIVORCE; FURTHER DEFINING "MARITAL PROPERTY" FOR PURPOSES OF CERTAIN PROPERTY RIGHTS; AND FURTHER PROVIDING FOR EQUITABLE DIVISION OF MARITAL PROPERTY, FOR DISPOSITION OF PROPERTY TO DEFEAT OBLIGATIONS AND FOR STATEMENT OF REASONS FOR DISTRIBUTION.

**Section 3.** Section 3301(d) of Title 23 is amended to read:

~~§ 3301. Grounds for divorce.~~

~~\* \* \*~~

~~(d) Irretrievable breakdown.—~~

~~(1) The court may grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a period of at least [two years] one year and that the marriage is irretrievably broken and the defendant either:~~

~~(i) Does not deny the allegations set forth in the affidavit.~~

~~(ii) Denies one or more of the allegations set forth in the affidavit but, after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least [two years] one year and that the marriage is irretrievably broken.~~

~~(2) If a hearing has been held pursuant to paragraph (1)(ii) and the court determines that there is a reasonable prospect of reconciliation, then the court shall continue the matter for a period not less than 90 days nor more than 120 days unless the parties agree to a period in excess of 120 days. During this period, the court shall require counseling as provided in section 3302 (relating to counseling). If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. If the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.~~

~~\* \* \*~~

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<sup>69</sup> Only those differences with 2003 Senate Bill No. 95 (Printer's No. 94) are replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions. Sections 4 through 7 of the legislation were re-numbered as 3 through 6, and because § 5(3) of the legislation was deleted, paragraphs (4) through (12) of § 5 were re-numbered as (3) through (11).

§ 3323. Decree of court.

(c.1) Bifurcation.--With the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b). In the absence of the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b) if:

(1) ~~at least one year has elapsed since~~ grounds have been established as provided in subsection (g); and

(2) the moving party has demonstrated that:

(i) compelling circumstances exist for the entry of the decree of divorce or annulment; and

(ii) sufficient economic protections have been provided for the other party during the pendency of the disposition of the matters provided for in subsection (b).

(g) Grounds established.--For purposes of subsections (c.1) and (d.1), grounds are established as follows:

(1) In the case of an action for divorce under section 3301(a) or (b) (relating to grounds for divorce), the court adopts a report of the master or makes its own findings that grounds for divorce exist.

(2) In the case of an action for divorce under section 3301(c), both parties have filed affidavits of consent.

(3) In the case of an action for divorce under section 3301(d), an affidavit has been filed and no counter-affidavit has been filed or, if a counter-affidavit has been filed denying the affidavit's averments, the court determines that the marriage is irretrievably broken and the parties have lived separate and apart for at least ~~one year~~ TWO YEARS at the time of the filing of the affidavit.

**Section 6 5.** This act shall apply as follows:

~~(3) The amendment of 23 Pa.C.S. § 3301(d) shall apply to final separations which begin on or after the effective date of this paragraph.~~

*The following is taken from 2003 Senate Bill No. 95  
(Printer's No. 1939):*<sup>70</sup>

AN ACT

Amending ~~Title~~TITLES 20 (DECEDENTS, ESTATES AND FIDUCIARIES) AND 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, FURTHER PROVIDING FOR RIGHT OF SURVIVING SPOUSE TO ELECTIVE SHARE; further defining "separate and apart" for purposes of divorce; providing for premarital agreements; further providing for decree of court in actions for divorce; further defining "marital property" for purposes of certain property rights; and further providing for equitable division of marital property, for disposition of property to defeat obligations and for statement of reasons for distribution.

~~**Section 1.** The definition of "separate and apart" in section 3103 of Title 23 of the Pennsylvania Consolidated Statutes is amended to read:~~

**SECTION 1.** SECTION 2203(A) OF TITLE 20 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

§ 2203. RIGHT OF ELECTION; RESIDENT DECEDENT.

(A) PROPERTY SUBJECT TO ELECTION.--[WHEN] EXCEPT AS PROVIDED IN SUBSECTION (C), WHEN A MARRIED PERSON DOMICILED IN THIS COMMONWEALTH DIES, HIS SURVIVING SPOUSE HAS A RIGHT TO AN ELECTIVE SHARE OF ONE-THIRD OF THE FOLLOWING PROPERTY:

(1) PROPERTY PASSING FROM THE DECEDENT BY WILL OR INTESTACY.

(2) INCOME OR USE FOR THE REMAINING LIFE OF THE SPOUSE OF PROPERTY CONVEYED BY THE DECEDENT DURING THE MARRIAGE TO THE EXTENT THAT THE DECEDENT AT THE TIME OF HIS DEATH HAD THE USE OF THE PROPERTY OR AN INTEREST IN OR POWER TO WITHDRAW THE INCOME THEREOF.

(3) PROPERTY CONVEYED BY THE DECEDENT DURING HIS LIFETIME TO THE EXTENT THAT THE DECEDENT AT THE TIME OF HIS DEATH HAD A POWER TO REVOKE THE CONVEYANCE OR TO CONSUME, INVADE OR DISPOSE OF THE PRINCIPAL FOR HIS OWN BENEFIT.

(4) PROPERTY CONVEYED BY THE DECEDENT DURING THE MARRIAGE TO HIMSELF AND ANOTHER OR OTHERS WITH RIGHT OF SURVIVORSHIP TO THE EXTENT OF ANY INTEREST IN THE PROPERTY THAT THE DECEDENT HAD THE POWER AT THE TIME OF HIS DEATH UNILATERALLY TO CONVEY ABSOLUTELY OR IN FEE.

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<sup>70</sup> Only those differences with 2003 Senate Bill No. 95 (Printer's No. 1847) are replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions.

(5) SURVIVORSHIP RIGHTS CONVEYED TO A BENEFICIARY OF AN ANNUITY CONTRACT TO THE EXTENT IT WAS PURCHASED BY THE DECEDENT DURING THE MARRIAGE AND THE DECEDENT WAS RECEIVING ANNUITY PAYMENTS THEREFROM AT THE TIME OF HIS DEATH.

(6) PROPERTY CONVEYED BY THE DECEDENT DURING THE MARRIAGE AND WITHIN ONE YEAR OF HIS DEATH TO THE EXTENT THAT THE AGGREGATE AMOUNT SO CONVEYED TO EACH DONEE EXCEEDS \$3,000, VALUED AT THE TIME OF CONVEYANCE.

IN CONSTRUING THIS SUBSECTION, A POWER IN THE DECEDENT TO WITHDRAW INCOME OR PRINCIPAL, OR A POWER IN ANY PERSON WHOSE INTEREST IS NOT ADVERSE TO THE DECEDENT TO DISTRIBUTE TO OR USE FOR THE BENEFIT OF THE DECEDENT ANY INCOME OR PRINCIPAL, SHALL BE DEEMED TO BE A POWER IN THE DECEDENT TO WITHDRAW SO MUCH OF THE INCOME OR PRINCIPAL AS IS SUBJECT TO SUCH POWER, EVEN THOUGH SUCH INCOME OR PRINCIPAL MAY BE DISTRIBUTED ONLY FOR SUPPORT OR OTHER PARTICULAR PURPOSE OR ONLY IN LIMITED PERIODIC AMOUNTS.

\* \* \*

(C) NONAPPLICABILITY.--PURSUANT TO 23 PA.C.S. § 3323(D.1) (RELATING TO DECREE OF COURT), THIS SECTION SHALL NOT APPLY IN THE EVENT A MARRIED PERSON DOMICILED IN THIS COMMONWEALTH DIES DURING THE COURSE OF DIVORCE PROCEEDINGS, NO DECREE OF DIVORCE HAS BEEN ENTERED PURSUANT TO 23 PA.C.S. § 3323 AND GROUNDS HAVE BEEN ESTABLISHED AS PROVIDED IN 23 PA.C.S. § 3323(G).

**SECTION 1.1.** THE DEFINITION OF “SEPARATE AND APART” IN SECTION 3103 OF TITLE 23 IS AMENDED TO READ:

§ 3103. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

“Separate and apart.” [Complete cessation] Cessation of [any and all] cohabitation, whether living in the same residence or not. In the event a complaint in divorce is filed and served, it shall be presumed that the parties commenced to live separate and apart not later than the date that the complaint was served.

\* \* \*

**Section 2.** Title 23 is amended by adding a section to read:

§ 3106. Premarital agreements.

(a) General rule.--The burden of proof to set aside a premarital agreement shall be upon the party alleging the agreement to be unenforceable. A premarital agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

(1) the party did not execute the agreement voluntarily; or

(2) the party, before execution of the agreement:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have an adequate knowledge of the property or financial obligations of the other party.

~~(b) Void agreements.--A premarital agreement executed within 60 days prior to the marriage shall be void. A waiver of this subsection shall be unenforceable.~~

~~(e) (B) Definition.--As used in this section, the term "premarital agreement" means an agreement regarding matters within the jurisdiction of the court under this part between prospective spouses made in contemplation of marriage and to be effective upon marriage.~~

**Section 3.** Sections 3323(c) and (d), 3501(a) and 3502(a) of Title 23 are amended and the sections are amended by adding subsections to read:

§ 3323. Decree of court.

\* \* \*

[(c) Bifurcation.--In the event that the court is unable for any reason to determine and dispose of the matters provided for in subsection (b) within 30 days after the report of the master has been filed, it may enter a decree of divorce or annulment. Upon the request of either party and after a hearing, the court may order alimony pendente lite, reasonable counsel fees, costs and expenses and may make a temporary order necessary to protect the interests of the parties pending final disposition of the matters in subsection (b).]

~~(d) Substitution for deceased party.--If one of the parties dies after the decree of divorce has been entered, but prior to the final determination in such proceeding of the property rights and interests of the parties under this part, the personal representative of the deceased party shall be substituted as a party as provided by law and the action shall proceed.]~~

(c.1) Bifurcation.--With the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b). In the absence of the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b) if:

(1) grounds have been established as provided in subsection (g); and

(2) the moving party has demonstrated that:

(i) compelling circumstances exist for the entry of the decree of divorce or annulment; and

(ii) sufficient economic protections have been provided for the other party during the pendency of the disposition of the matters provided for in subsection (b).

\* \* \*

**Section 5.** This act shall apply as follows:

(4) The amendment or addition of ~~23 Pa.C.S. § 3323(d) and (d.1)~~ 20 PA.C.S. § 2203(A) AND (C) AND 23 PA.C.S. § 3323(D.1) shall apply to the death of one of the parties on or after the effective date of this paragraph IRRESPECTIVE OF WHETHER THE DIVORCE PROCEEDING WAS COMMENCED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH.

(5) The addition of 23 Pa.C.S. § 3323(g) shall apply to bifurcation proceedings commenced on or after the effective date of this paragraph and cases in which one of the parties dies on or after the effective date of this paragraph. ~~For those cases under 23 Pa.C.S. § 3323(g)(3) where the one-year separation period of 23 Pa.C.S. § 3301(d) is not applicable, the court shall determine that the parties had lived separate and apart for at least two years at the time of the filing of the affidavit.~~

~~**Section 6.** This act shall take effect as follows:~~

- ~~(1) The addition of 23 Pa.C.S. § 3106 shall take effect in six months.~~
- ~~(2) Section 5(2) of this act shall take effect in six months.~~
- ~~(3) The remainder of this act shall take effect in 60 days.~~

**SECTION 6.** THIS ACT SHALL TAKE EFFECT IN 60 DAYS.

### **APPENDIX 3: SELECT CUSTODY LEGISLATION**

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2002 Senate Bill No. 1260 (Printer's No. 1651)

2002 Senate Bill No. 1260 (Printer's No. 2230)

2002 Senate Bill No. 1260 (Printer's No. 2383)

2003 Senate Bill No. 275 (Printer's No. 275)

2005 Senate Bill No. 74 (Printer's No. 1951)

2009 House Bill No. 1639 (Printer's No. 2037)

2009 House Bill No. 1639 (Printer's No. 3705)

2009 House Bill No. 1639 (Printer's No. 3884)

2009 House Bill No. 1639 (Printer's No. 4280)

2009 House Bill No. 1639 (Printer's No. 4468)



*The following is taken from 2002 Senate Bill No. 1260  
(Printer's No. 1651):*

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for child custody generally and for child custody jurisdiction and enforcement.

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

**Section 1.** Section 4346 and Chapter 53 of Title 23 of the Pennsylvania Consolidated Statutes are repealed.

**Section 2.** Title 23 is amended by adding chapters to read:

CHAPTER 53  
CUSTODY GENERALLY

Sec.

- 5321. Scope.
- 5322. Definitions.
- 5323. Award of custody or visitation.
- 5324. Standing for any form of physical custody, legal custody or visitation.
- 5325. Standing for partial physical custody and visitation.
- 5326. Presumption in cases concerning primary physical custody.
- 5327. Factors to consider when awarding custody.
- 5328. Consideration of criminal conviction.
- 5329. Consideration of criminal charge.
- 5330. Factors not to consider when awarding custody.
- 5331. Parenting plan.
- 5332. Informational programs.
- 5333. Counseling as part of order.
- 5334. Guardian ad litem for child.
- 5335. Counsel for child.
- 5336. Access to records and information.
- 5337. Relocation.
- 5338. Modification of existing order.
- 5339. Award of counsel fees, costs and expenses.

§ 5321. Scope.

This chapter applies to disputes relating to custody and visitation matters.

§ 5322. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abuse.” As defined in section 6102 (relating to definitions).

“Adult.” An individual 18 years of age or older.

“Agency.” Any organization, society, institution or other entity, including the county children and youth social service agency or court facility, which provides for the care of the child.

“Child.” An unemancipated individual under 18 years of age.

“Legal custody.” The right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.

“Parental duties.” Includes meeting the physical, emotional and social needs of the child.

“Partial physical custody.” The right to assume physical custody of the child for less than a majority of the time.

“Physical custody.” The actual physical possession and control of a child.

“Primary physical custody.” The right to assume physical custody of the child for the majority of time.

“Relocation.” A change in a residence of the child which significantly impairs the ability of a nonrelocating party to exercise custodial rights.

“Shared legal custody.” The right of more than one individual to legal custody of the child.

“Shared physical custody.” The right of more than one individual to assume physical custody of the child, each having approximately the same amount of physical custodial time with the child.

“Sole legal custody.” The right of one individual to exclusive legal custody of the child.

“Sole physical custody.” The right of one individual to exclusive physical custody of the child.

“Supervised visitation.” Visitation in which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with visitation rights.

“Visitation.” The right to spend time with the child but not the right to remove the child from the care or control of a custodial party.

§ 5323. Award of custody or visitation.

(a) Types of award.--After considering the factors set forth in section 5327 (relating to factors to consider when awarding custody), the court may award any of the following types of custody and visitation if it is in the best interest of the child:

- (1) Sole legal custody.
- (2) Shared legal custody.
- (3) Sole physical custody.
- (4) Shared physical custody.
- (5) Primary physical custody.
- (6) Partial physical custody.
- (7) Visitation.

(8) Supervised visitation.

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

(c) Notice.--Any custody or visitation order shall include notice of a party's obligations under section 5337 (relating to relocation).

(d) Enforcement.--In awarding custody or visitation, the court shall specify the terms and conditions of the award in sufficient detail to enable a party to enforce the court order through law enforcement authorities.

(e) Contempt for noncompliance with any custody or visitation order.--

(1) A party who willfully fails to comply with any custody or visitation order may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:

- (i) Imprisonment for a period of not more than six months.
- (ii) A fine of not more than \$500.
- (iii) Probation for a period of not more than six months.
- (iv) An order for nonrenewal, suspension or denial of operating privilege pursuant to section 4355 (relating to denial or suspension of licenses).
- (v) Counsel fees and costs.

(2) An order committing an individual to jail under this section shall specify the condition which, when fulfilled, will result in the release of that individual.

(f) Parties in same residence.--Parties living separate and apart in the same residence may seek relief under this chapter, but any custody or visitation order made under such a circumstance shall be effective only upon:

- (1) one party physically vacating the residence; or
- (2) an order awarding one party exclusive possession of the residence.

§ 5324. Standing for any form of physical custody, legal custody or visitation.

The following individuals may file an action under this chapter for any form of physical custody, legal custody or visitation and shall be given notice and an opportunity to participate in any such action initiated by another party:

- (1) A parent of the child.
- (2) With respect to a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity, an adult:
  - (i) whose relationship with the child began either with the consent of a parent of the child or pursuant to a court order; and
  - (ii) who assumes parental duties on behalf of the child.
- (3) An adult who has:
  - (i) resided with the child for a period of at least 12 consecutive months, excluding brief temporary absences of the child from the principal residence of that adult;
  - (ii) filed the action:
    - (A) within six months after the termination of the residential period under subparagraph (i); or

(B) at any time, if the residential requirement under subparagraph (i) has been met and the residency has not terminated;

(iii) developed a significant relationship with the child; and

(iv) regularly performed parental duties on behalf of the child:

(A) with the permission or acquiescence of at least one of the child's parents; and

(B) primarily for reasons other than financial compensation.

(4) An adult with a substantial and sincere interest in the welfare of the child to whom a parent relinquished physical custody of the child if the parent either consented in writing or did not object to the entry of an order confirming custody with that adult.

§ 5325. Standing for partial physical custody and visitation.

(a) Who may file.--In addition to those parties set forth in section 5324 (relating to standing for any form of physical custody, legal custody or visitation), the following individuals may file an action under this chapter for partial physical custody or visitation:

(1) An adult related to the child by blood, adoption or marriage, where a parent of the child is deceased.

(2) The parent's parent or grandparent where the parents of the child:

(i) have been separated for a period of at least six months; or

(ii) have commenced a proceeding to dissolve their marriage, in which case the parent's parent or grandparent may file while the dissolution proceeding is pending or subsequent to the dissolution of the marriage.

(3) The parent's parent or grandparent with whom the child has resided for a period of at least 12 months excluding brief temporary absences of the child from the principal residence of the parent's parent or grandparent, where the child is subsequently removed from the home by a parent.

(b) Effect of adoption.--

(1) Subsection (a) shall not apply if the child has been adopted by an individual other than a stepparent or parent's parent or grandparent.

(2) Any partial physical custody or visitation rights granted to a party with standing under this section prior to the adoption of the child by an individual other than a stepparent or parent's parent or grandparent shall be automatically terminated upon the adoption unless such rights are specifically extended pursuant to an agreement or order of court.

§ 5326. Presumption in cases concerning primary physical custody.

(a) Between parents.--In any action regarding the custody of the child between the parents of the child, there shall be no presumption that custody should be awarded to a particular parent.

(b) Between a parent and third party.--In any action regarding the custody of the child between a parent of the child and a nonparent, there shall be a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.

(c) Between third parties.--In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party.

§ 5327. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody or visitation, the court shall determine the best interest of the child by considering all relevant factors, including the following:

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

(2) The parental duties performed by each party on behalf of the child.

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

(4) The availability of extended family.

(5) The child's sibling relationships.

(6) The present and past abuse committed by a party or member of the party's household.

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

(8) The attempts of a parent to turn the child against the other parent.

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

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

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

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

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another.

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

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

(16) Any other relevant factor.

(b) Grandparents and other family members.--

(1) In ordering partial physical custody or visitation to a party who has standing under section 5325(a)(1) or (2) (relating to standing for partial physical custody and visitation), the court shall consider the following:

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

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

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

(2) In ordering partial physical custody or visitation to a parent's parent or grandparent who has standing under section 5325(a)(3), the court shall consider whether the award:

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

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

§ 5328. Consideration of criminal conviction.

(a) Offenses.--Where a party seeks any form of custody or visitation, the court shall consider whether that party or member of that party's household as been convicted of or has pleaded guilty or no contest to any of the following offenses:

- (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide).
- (2) 18 Pa.C.S. § 2702 (relating to aggravated assault).
- (3) 18 Pa.C.S. § 2706 (relating to terroristic threats).
- (4) 18 Pa.C.S. § 2709(b) (relating to harassment and stalking).
- (5) 18 Pa.C.S. § 2901 (relating to kidnapping).
- (6) 18 Pa.C.S. § 2902 (relating to unlawful restraint).
- (7) 18 Pa.C.S. § 2903 (relating to false imprisonment).
- (8) 18 Pa.C.S. § 3121 (relating to rape).
- (9) 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).
- (10) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
- (11) 18 Pa.C.S. § 3124.1 (relating to sexual assault).
- (12) 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
- (13) 18 Pa.C.S. § 3126 (relating to indecent assault).
- (14) 18 Pa.C.S. § 3127 (relating to indecent exposure).
- (15) 18 Pa.C.S. § 3301 (relating to arson and related offenses).
- (16) 18 Pa.C.S. § 4302 (relating to incest).
- (17) 18 Pa.C.S. § 4304 (relating to endangering welfare of children).
- (18) 18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses).
- (19) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).
- (20) 23 Pa.C.S. § 6114 (relating to contempt for violation of order or agreement).
- (21) 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance).

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

(b) Parent convicted of murder.--No court shall award custody, partial custody or visitation to a parent who has been convicted of murder under 18 Pa.C.S. § 2502(a) (relating to murder) of the other parent of the child who is the subject of the order unless the child is of suitable age and consents to the order.

(c) Initial evaluation.--The court shall provide for an evaluation to determine whether:

- (1) the party or household member who committed an offense under subsection (a) poses a threat to the child; and
- (2) counseling is necessary for that party or household member.

(d) Counseling.--

(1) Where the court determines under subsection (c) that counseling is necessary, it shall appoint a qualified professional specializing in treatment relating to the particular offense to provide counseling to the offending individual.

(2) Counseling may include a program of treatment or individual therapy designed to rehabilitate the offending individual which addresses, but is not limited

to, issues regarding physical and sexual abuse, the psychology of the offender and the effects of the offense on the victim.

(e) Subsequent evaluation.--

(1) At any time during or subsequent to the counseling under subsection (d), the court may require another evaluation to determine whether further counseling is necessary.

(2) If the court awards custody or visitation to a party who committed an offense under subsection (a) or who shares a household with an individual who committed an offense under subsection (a), the court may require subsequent evaluations on the rehabilitation of the offending individual and the well-being of the child subsequent to the order. If upon review of a subsequent evaluation the court determines that the offending individual poses a threat of harm to the child, the court may schedule a hearing to modify the custody or visitation order.

(f) Costs.--The court may order a party to pay all or part of the costs of the counseling and evaluations under this section.

§ 5329. Consideration of criminal charge.

(a) Expedited hearing.--A party who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) or otherwise about a charge filed against the other party for an offense listed under section 5328(a) (relating to consideration of criminal conviction) may move for a temporary custody or visitation order or modification of an existing custody or visitation order. The court shall hold the hearing under this subsection in an expeditious manner.

(b) Risk of harm.--In evaluating any request under subsection (a), the court shall consider whether the party who is or has been charged with an offense set forth in section 5328(a) poses a risk of harm to the child.

(c) No prejudice.--Failure to either apply for information under 42 Pa.C.S. § 1904 or act under this section shall not prejudice any party in a custody or visitation proceeding.

§ 5330. Factors not to consider when awarding custody.

In ordering any form of custody or visitation, the court shall not base its decision upon the following factors:

(1) The custody or visitation arrangements pursuant to an interim or emergency order entered without the benefit of a full hearing.

(2) The disparity of the economic circumstances of the parties.

(3) The race, religion, ethnic background or sexual orientation of a party.

§ 5331. Parenting plan.

(a) Purpose.--In a contested custody proceeding, the court shall require the parties to submit parenting plans for the care and custody of the child, to aid the court in resolving the custody dispute. A parenting plan and the position of a party as set forth in that parenting plan shall not be admissible as evidence by another party.

(b) Contents.--A parenting plan shall include the following:

(1) The schedule for personal care and control of the child, including parenting time, holidays and vacations.

(2) The education and religious involvement, if any, of the child.

- (3) The health care of the child.
- (4) Child-care arrangements.
- (5) Transportation arrangements.
- (6) A procedure by which proposed changes, disputes and alleged breaches of the custody order may be adjudicated or otherwise resolved through mediation, arbitration or other means.
- (7) Any matter specified by the court.
- (8) Any other matter that serves the best interest of the child.

§ 5332. Informational programs.

- (a) Attendance.--The court may direct the parties to attend informational programs concerning parental duties.
- (b) Process not delayed.--Subsequent proceedings and the entry of any order or decree shall not be delayed because of the lack of participation in any informational program by one of the parties.
- (c) Costs.--The court may order a party to pay all or part of the costs of the information programs under this section.

§ 5333. Counseling as part of order.

- (a) Attendance.--The court may, as part of a custody or visitation order, require the parties to attend counseling sessions.
- (b) Abuse.--In situations involving abuse, the court may order individual counseling for the abuser.
- (c) Verification.--Each party's participation in the counseling sessions shall be verified by the counselor.
- (d) Costs.--The court may order a party to pay all or part of the costs of the counseling sessions under this section.

§ 5334. Guardian ad litem for child.

- (a) Appointment.--The court may appoint a guardian ad litem for the child. The court shall specify the terms of the appointment, including the role, duties and scope of authority of the guardian ad litem.
- (b) Investigation and report.--The guardian ad litem shall investigate and report to the court information relevant to the custody or visitation proceeding.
- (c) Abuse.--If substantial allegations of abuse are made, the court shall appoint a guardian ad litem for the child if:
  - (1) counsel for the child is not appointed under section 5335 (relating to counsel for child); or
  - (2) the court is satisfied that the relevant information will be presented to the court only with such appointment.
- (d) Subject to examination.--A guardian ad litem who submits a report or makes a recommendation to the court shall be subject to examination by the parties.
- (e) Costs.--The court may order a party to pay all or part of the costs of appointing a guardian ad litem under this section.

§ 5335. Counsel for child.

(a) Appointment.--The court may appoint counsel to represent the child if the court determines that the appointment will assist in resolving the issues in the custody or visitation proceeding.

(b) Abuse.--Substantial allegations of abuse constitute a reasonable basis for appointing counsel for the child.

(c) Not subject to examination.--Counsel appointed by the court for the child shall not be subject to examination unless such counsel testifies in the matter.

(d) Costs.--The court may order a party to pay all or part of the costs of appointing counsel for the child under this section.

§ 5336. Access to records and information.

(a) General rule.--Except as provided in subsections (b) and (c):

(1) A parent or party granted custody or visitation under section 5323 (relating to award of custody or visitation) shall be provided access to:

- (i) the medical, dental, religious and school records of the child;
- (ii) the address of the child and any other party; and
- (iii) any other information that the court deems necessary or proper.

(2) Upon request, a parent, party or entity possessing any information set forth in paragraph (1) shall provide it to any parent or party granted custody or visitation.

(b) Nondisclosure of confidential information.--The court shall not order the disclosure of any of the following information to any parent or party granted custody or visitation:

- (1) The address of a victim of abuse.
- (2) Confidential information from an abuse counselor or shelter.
- (3) Information independently protected from disclosure by the child's right to confidentiality under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, or any other statute.

(c) Other information.--The court may determine not to release information set forth in subsection (a), in which case it shall state the reason for its denial on the record.

§ 5337. Relocation.

(a) Applicability.--This section applies to any proposed relocation.

(b) General rule.--No relocation shall occur unless:

- (1) every individual who has custody or visitation rights to the child consents to the proposed relocation; or
- (2) the court approves the proposed relocation.

(c) Notice.--

(1) The party proposing the relocation shall notify every other individual who has custody or visitation rights to the child.

(2) Reasonable notice shall be given no later than:

- (i) the 60th day before the date of the proposed relocation; or
- (ii) the 10th day after the date that the individual knows of the relocation, if:
  - (A) the individual did not know and could not reasonably have known of the relocation in sufficient time to comply with the 60-day notice; and

(B) it is not reasonably possible to delay the date of relocation so as to comply with the 60-day notice.

(3) Except as provided by section 5336 (relating to access to records and information), the following information, if available, must be included with the notice of the proposed relocation:

- (i) The address of the intended new residence.
- (ii) The mailing address, if not the same as the address of the intended new residence.
- (iii) The home telephone number of the intended new residence.
- (iv) The name of the new school district and school.
- (v) The date of the proposed relocation.
- (vi) The reasons for the proposed relocation.
- (vii) A proposal for a revised custody or visitation schedule.
- (viii) Any other information which the party proposing the relocation deems appropriate.
- (ix) A warning to the nonrelocating party that if the nonrelocating party does not file with the court an objection to the proposed relocation within 30 days after receipt of the notice, that party shall be foreclosed from objecting to the relocation.

(4) If any of the information set forth in paragraph (3) is not known when the notice is sent but is later made known to the party proposing the relocation, then that party shall promptly inform every individual who received notice under this subsection.

(d) Objection to proposed relocation.--

(1) A party entitled to receive notice may file with the court an objection to the proposed relocation and seek a temporary or permanent order to prevent the relocation.

(2) An objection made under this subsection shall be filed with the court within 30 days of receipt of the proposed relocation notice.

(3) If notice of the proposed relocation has been properly given and no objection to the proposed relocation has been filed in court, then it shall be presumed that the nonrelocating party has consented to the proposed relocation.

(4) If a party entitled to notice does not file with the court an objection to the relocation within 30 days after receipt of the notice but later petitions the court for review of the custodial arrangements, the court shall not accept testimony challenging the relocation.

(e) Confirmation of relocation.--If no objection to the proposed relocation is filed under subsection (d), the party proposing the relocation may file the following with the court prior to the relocation:

- (1) an affidavit stating that the party provided notice to every individual entitled to notice, the time to file an objection to the proposed relocation has passed and no individual entitled to receive notice has filed an objection to the proposed relocation;
- (2) a petition to confirm the relocation and modify any existing custody or visitation order; and
- (3) a proposed order containing the information set forth in subsection (c)(3).

(f) Hearing.--

(1) The court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before the relocation occurs unless exigent circumstances exist, in which case the relocation may occur pending an expedited full hearing.

(2) If the court approves the proposed relocation, it shall:

(i) modify any existing custody or visitation order; or

(ii) establish the terms and conditions of a custody or visitation order.

(g) Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors:

(1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

(6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

(7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(9) Any other factor affecting the best interest of the child.

(h) Burden of proof.--

(1) The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection (g).

(2) Each party has the burden of establishing the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.

(i) Failure to provide reasonable notice.--The court may consider a failure to provide reasonable notice of a proposed relocation as:

(1) a factor in making a determination regarding the relocation;

(2) a factor in determining whether custody or visitation rights should be modified;

(3) a basis for ordering the return of the child to the nonrelocating party if the relocation has occurred without reasonable notice;

(4) sufficient cause to order the party proposing the relocation to pay reasonable expenses and counsel fees incurred by the party objecting to the relocation; and

(5) a ground for contempt and the imposition of sanctions against the party proposing the relocation.

(j) Effect of relocation prior to hearing.--If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.

§ 5338. Modification of existing order.

(a) Best interest of the child.--Upon petition, a court may modify a custody or visitation order to serve the best interest of the child.

(b) Applicability.--This section shall apply to any custody or visitation order entered by a court of this Commonwealth or any other state subject to the jurisdictional requirements set forth in Chapter 54 (relating to uniform child custody jurisdiction and enforcement).

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

Under this chapter, a court may award reasonable interim or final counsel fees, costs and expenses to any party, based on any relevant factor including, but not limited to, the following:

(1) The good faith conduct of the parties.

(2) The relative financial resources of the parties, including the ability of a party to participate in custody litigation.

(3) The need of a party to engage experts.

(4) The best interest of the child.

***NOTE: Chapter 54 (Uniform Child Custody Jurisdiction and Enforcement) is not replicated here.***

**Section 3.** A proceeding under 23 Pa.C.S. Ch. 53 which was commenced before the effective date of this act is governed by the law in effect at the time the proceeding was initiated.

**Section 4.** This act shall take effect in 60 days.

*The following is taken from 2002 Senate Bill No. 1260  
(Printer's No. 2230):*<sup>71</sup>

CHAPTER 53  
~~CUSTODY GENERALLY~~  
CHILD CUSTODY

Sec.

~~5330. Factors not to consider when awarding custody.~~

5330. FACTORS UPON WHICH CUSTODY ORDER MAY NOT BE BASED.

§ 5321. Scope.

This chapter applies to disputes relating to CHILD custody and visitation matters.

§ 5324. Standing for any form of physical custody, legal custody or visitation.

The following individuals may file an action under this chapter for any form of physical custody, legal custody or visitation and shall be given notice and an opportunity to participate in any such action initiated by another party:

(1) A parent of the child.

(2) ANY PERSON WHO STANDS IN LOCO PARENTIS TO THE CHILD.

~~(2)~~ (3) With respect to a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity, an adult:

(i) whose relationship with the child began either with the consent of a parent of the child or pursuant to a court order; and

~~(ii) who assumes parental duties on behalf of the child.~~

~~(3) An adult who has:~~

(II) WHO ASSUMES OR IS WILLING TO ASSUME RESPONSIBILITY FOR THE CHILD.

(4) WHERE THE PARENTS OF THE CHILD HAVE BEEN SEPARATED A PERIOD OF AT LEAST SIX MONTHS OR COMMENCED A PROCEEDING TO DISSOLVE THEIR MARRIAGE, AN ADULT WHO HAS:

(i) resided with the child for a period of at least 12 consecutive months, excluding brief temporary absences of the child from the principal residence of that adult;

(ii) filed the action:

(A) within six months after the termination of the residential period under subparagraph (i); or

(B) at any time, if the residential requirement under subparagraph (i) has been met and the residency has not terminated;

(iii) developed a significant relationship with the child; and

(iv) regularly performed parental duties on behalf of the child:

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<sup>71</sup> Only those differences with 2002 Senate Bill No. 1260 (Printer's No. 1651) are replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions.

(A) with the permission or acquiescence of at least one of the child's parents; and

(B) primarily for reasons other than financial compensation.

~~(4)~~ (5) An adult with a substantial and sincere interest in the welfare of the child to whom a parent relinquished physical custody of the child if the parent either consented in writing or did not object to the entry of an order confirming custody with that adult.

(6) A GRANDPARENT WHO ASSUMES RESPONSIBILITY FOR A CHILD WHO HAS BEEN DETERMINED TO BE A DEPENDENT CHILD PURSUANT TO 42 PA.C.S. CH. 63 (RELATING TO JUVENILE MATTERS).

§ 5325. Standing for partial physical custody and visitation.

(a) Who may file.--In addition to those parties set forth in section 5324 (relating to standing for any form of physical custody, legal custody or visitation), the following individuals may file an action under this chapter for partial physical custody or visitation:

~~(1) An adult related to the child by blood, adoption or marriage, where a parent of the child is deceased.~~

(1) WHERE A PARENT OF THE CHILD IS DECEASED, AN ADULT RELATED TO THE DECEASED PARENT BY BLOOD, ADOPTION OR MARRIAGE.

(2) The parent's parent or grandparent where the parents of the child:

(i) have been separated for a period of at least six months; or

(ii) have commenced a proceeding to dissolve their marriage, in which case the parent's parent or grandparent may file while the dissolution proceeding is pending or subsequent to the dissolution of the marriage.

(3) The parent's parent or grandparent with whom the child has resided for a period of at least 12 months excluding brief temporary absences of the child from the principal residence of the parent's parent or grandparent, where the child is subsequently removed from the home by a parent.

§ 5328. Consideration of criminal conviction.

(e) Subsequent evaluation.--

(1) At any time during or subsequent to the counseling under subsection (d), the court may require another evaluation to determine whether further counseling is necessary.

(2) If the court awards custody or visitation to a party who committed an offense under subsection (a) or who shares a household with an individual who committed an offense under subsection (a), the court may require subsequent evaluations on the rehabilitation of the offending individual and the well-being of the child subsequent to the order. If upon review of a subsequent evaluation the court determines that the offending individual poses a threat of PHYSICAL, EMOTIONAL OR PSYCHOLOGICAL harm to the child, the court may schedule a hearing to modify the custody or visitation order.

§ 5329. Consideration of criminal charge.

(b) Risk of harm.--In evaluating any request under subsection (a), the court shall consider whether the party who is or has been charged with an offense set forth in section 5328(a) poses a risk of PHYSICAL, EMOTIONAL OR PSYCHOLOGICAL harm to the child.

~~§ 5330. Factors not to consider when awarding custody.~~

§ 5330. FACTORS UPON WHICH CUSTODY ORDER MAY NOT BE BASED.

In ordering any form of custody or visitation, the court shall not base its decision upon the following factors:

- (1) The custody or visitation arrangements pursuant to an interim or emergency order entered without the benefit of a full hearing.
- (2) The disparity of the economic circumstances of the parties.
- (3) The race, religion, ethnic background, NATIONAL ORIGIN, GENDER or sexual orientation of a party.

§ 5334. Guardian ad litem for child.

(c) Abuse.--If substantial allegations of abuse OF THE CHILD are made, the court shall appoint a guardian ad litem for the child if:

- (1) counsel for the child is not appointed under section 5335 (relating to counsel for child); or
- (2) the court is satisfied that the relevant information will be presented to the court only with such appointment.

§ 5335. Counsel for child.

(b) Abuse.--Substantial allegations of abuse OF THE CHILD constitute a reasonable basis for appointing counsel for the child.



*The following is taken from 2002 Senate Bill No. 1260  
(Printer's No. 2383):<sup>72</sup>*

Sec.

~~5326. Presumption in cases concerning primary physical custody.~~

~~5327. Factors to consider when awarding custody.~~

~~5328. Consideration of criminal conviction.~~

~~5329. Consideration of criminal charge.~~

~~5330. Factors upon which custody order may not be based.~~

5326. EFFECT OF ADOPTION.

5327. PRESUMPTION IN CASES CONCERNING PRIMARY PHYSICAL CUSTODY.

5328. FACTORS TO CONSIDER WHEN AWARDING CUSTODY.

5329. CONSIDERATION OF CRIMINAL CONVICTION.

5330. CONSIDERATION OF CRIMINAL CHARGE.

§ 5323. Award of custody or visitation.

(a) Types of award.--After considering the factors set forth in section ~~5327~~ 5328 (relating to factors to consider when awarding custody), the court may award any of the following types of custody and visitation if it is in the best interest of the child:

- (1) Sole legal custody.
- (2) Shared legal custody.
- (3) Sole physical custody.
- (4) Shared physical custody.
- (5) Primary physical custody.
- (6) Partial physical custody.
- (7) Visitation.
- (8) Supervised visitation.

~~§ 5324. Standing for any form of physical custody, legal custody or visitation.~~

~~The following individuals may file an action under this chapter for any form of physical custody, legal custody or visitation and shall be given notice and an opportunity to participate in any such action initiated by another party:~~

- ~~(1) A parent of the child.~~
- ~~(2) Any person who stands in loco parentis to the child.~~
- ~~(3) With respect to a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity, an adult:~~
  - ~~(i) whose relationship with the child began either with the consent of a parent of the child or pursuant to a court order; and~~
  - ~~(ii) who assumes or is willing to assume responsibility for the child.~~
- ~~(4) Where the parents of the child have been separated a period of at least six months or commenced a proceeding to dissolve their marriage, an adult who has:~~

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<sup>72</sup> Only those differences with 2002 Senate Bill No. 1260 (Printer's No. 2230) are replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions.

~~(i) resided with the child for a period of at least 12 consecutive months, excluding brief temporary absences of the child from the principal residence of that adult;~~

~~(ii) filed the action:~~

~~(A) within six months after the termination of the residential period under subparagraph (i); or~~

~~(B) at any time, if the residential requirement under subparagraph (i) has been met and the residency has not terminated;~~

~~(iii) developed a significant relationship with the child; and~~

~~(iv) regularly performed parental duties on behalf of the child:~~

~~(A) with the permission or acquiescence of at least one of the child's parents; and~~

~~(B) primarily for reasons other than financial compensation.~~

~~(5) An adult with a substantial and sincere interest in the welfare of the child to whom a parent relinquished physical custody of the child if the parent either consented in writing or did not object to the entry of an order confirming custody with that adult.~~

~~(6) A grandparent who assumes responsibility for a child who has been determined to be a dependent child pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters).~~

~~§ 5325. Standing for partial physical custody and visitation.~~

~~(a) Who may file.—In addition to those parties set forth in section 5324 (relating to standing for any form of physical custody, legal custody or visitation), the following individuals may file an action under this chapter for partial physical custody or visitation:~~

~~(1) Where a parent of the child is deceased, an adult related to the deceased parent by blood, adoption or marriage.~~

~~(2) The parent's parent or grandparent where the parents of the child:~~

~~(i) have been separated for a period of at least six months; or~~

~~(ii) have commenced a proceeding to dissolve their marriage, in which case the parent's parent or grandparent may file while the dissolution proceeding is pending or subsequent to the dissolution of the marriage.~~

~~(3) The parent's parent or grandparent with whom the child has resided for a period of at least 12 months excluding brief temporary absences of the child from the principal residence of the parent's parent or grandparent, where the child is subsequently removed from the home by a parent.~~

~~(b) Effect of adoption.—~~

~~(1) Subsection (a) shall not apply if the child has been adopted by an individual other than a stepparent or parent's parent or grandparent.~~

~~(2) Any partial physical custody or visitation rights granted to a party with standing under this section prior to the adoption of the child by an individual other than a stepparent or parent's parent or grandparent shall be automatically terminated upon the adoption unless such rights are specifically extended pursuant to an agreement or order of court.~~

§ 5324. STANDING FOR ANY FORM OF PHYSICAL CUSTODY, LEGAL CUSTODY OR VISITATION.

THE FOLLOWING INDIVIDUALS MAY FILE AN ACTION UNDER THIS CHAPTER FOR ANY FORM OF PHYSICAL CUSTODY, LEGAL CUSTODY OR VISITATION:

- (1) A PARENT OF THE CHILD.
- (2) A GRANDPARENT OF THE CHILD:
  - (I) WHOSE RELATIONSHIP WITH THE CHILD BEGAN EITHER WITH THE CONSENT OF A PARENT OF THE CHILD OR PURSUANT TO A COURT ORDER;
  - (II) WHO ASSUMES OR IS WILLING TO ASSUME RESPONSIBILITY FOR THE CHILD; AND
  - (III) ONE OF THE FOLLOWING CONDITIONS IS MET:
    - (A) FOR A 12-MONTH PERIOD THE GRANDPARENT HAS ASSUMED THE ROLE AND RESPONSIBILITIES OF THE CHILD'S PARENT, PROVIDING PHYSICAL, EMOTIONAL AND SOCIAL NEEDS OF THE CHILD;
    - (B) THE CHILD HAS BEEN DETERMINED TO BE A DEPENDENT CHILD PURSUANT TO 42 PA.C.S. CH. 63 (RELATING TO JUVENILE MATTERS); OR
    - (C) THE CHILD IS SUBSTANTIALLY AT RISK DUE TO PARENTAL ABUSE, NEGLECT, DRUG OR ALCOHOL ABUSE OR INCAPACITY.

§ 5325. STANDING FOR PARTIAL PHYSICAL CUSTODY AND VISITATION.

IN ADDITION TO SITUATIONS SET FORTH IN SECTION 5324 (RELATING TO STANDING FOR ANY FORM OF PHYSICAL CUSTODY, LEGAL CUSTODY OR VISITATION), GRANDPARENTS AND GREAT-GRANDPARENTS MAY FILE AN ACTION UNDER THIS CHAPTER FOR PARTIAL PHYSICAL CUSTODY OR VISITATION IN THE FOLLOWING SITUATIONS:

- (1) WHERE THE PARENT OF THE CHILD IS DECEASED, A GRANDPARENT OR GREAT-GRANDPARENT OF THE DECEASED PARENT MAY FILE AN ACTION UNDER THIS SUBSECTION;
- (2) WHERE THE PARENTS OF THE CHILD HAVE BEEN SEPARATED FOR A PERIOD OF AT LEAST SIX MONTHS OR HAVE COMMENCED AND CONTINUED A PROCEEDING TO DISSOLVE THEIR MARRIAGE; OR
- (3) THE CHILD HAS FOR A PERIOD OF AT LEAST 12 CONSECUTIVE MONTHS RESIDED WITH THE GRANDPARENT OR GREAT-GRANDPARENT, EXCLUDING BRIEF TEMPORARY ABSENCES OF THE CHILD FROM THE HOME, AND IS REMOVED FROM THE HOME BY THE PARENTS, AN ACTION MAY BE FILED WITHIN SIX MONTHS AFTER THE REMOVAL OF THE CHILD FROM THE HOME.

§ 5326. EFFECT OF ADOPTION.

ANY RIGHTS TO SEEK PHYSICAL CUSTODY, LEGAL CUSTODY OR VISITATION RIGHTS AND ANY CUSTODY OR VISITATION RIGHTS THAT

HAVE BEEN GRANTED UNDER SECTION 5324 (RELATING TO STANDING FOR ANY FORM OF PHYSICAL CUSTODY, LEGAL CUSTODY OR VISITATION) OR 5325 (RELATING TO STANDING FOR PARTIAL PHYSICAL CUSTODY AND VISITATION) TO A GRANDPARENT OR GREAT-GRANDPARENT PRIOR TO THE ADOPTION OF THE CHILD BY AN INDIVIDUAL OTHER THAN A STEPPARENT, GRANDPARENT OR GREAT-GRANDPARENT SHALL BE AUTOMATICALLY TERMINATED UPON SUCH ADOPTION.

§ ~~5326~~ 5327. Presumption in cases concerning primary physical custody.

§ ~~5327~~ 5328. Factors to consider when awarding custody.

~~(b) Grandparents and other family members.—~~

~~(1) In ordering partial physical custody or visitation to a party who has standing under section 5325(a)(1) or (2) (relating to standing for partial physical custody and visitation), the court shall consider the following:~~

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

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

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

~~(2) In ordering partial physical custody or visitation to a parent's parent or grandparent who has standing under section 5325(a)(3), the court shall consider whether the award:~~

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

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

(B) GRANDPARENTS AND GREAT-GRANDPARENTS.--

(1) IN ORDERING PARTIAL PHYSICAL CUSTODY OR VISITATION TO A PARTY WHO HAS STANDING UNDER SECTION 5325(A)(1) OR (2) (RELATING TO STANDING FOR PARTIAL PHYSICAL CUSTODY AND VISITATION), THE COURT SHALL CONSIDER THE FOLLOWING:

(I) THE AMOUNT OF PERSONAL CONTACT BETWEEN THE CHILD AND THE PARTY PRIOR TO THE FILING OF THE ACTION;

(II) WHETHER THE AWARD INTERFERES WITH ANY PARENT-CHILD RELATIONSHIP; AND

(III) WHETHER THE AWARD IS IN THE BEST INTEREST OF THE CHILD.

(2) IN ORDERING PARTIAL PHYSICAL CUSTODY OR VISITATION TO A PARENT'S PARENT OR GRANDPARENT WHO HAS STANDING UNDER SECTION 5325(A)(3), THE COURT SHALL CONSIDER WHETHER THE AWARD:

(I) INTERFERES WITH ANY PARENT-CHILD RELATIONSHIP; AND

(II) IS IN THE BEST INTEREST OF THE CHILD.

§ ~~5328~~ 5329. Consideration of criminal conviction.

§ ~~5329~~ 5330. Consideration of criminal charge.

***The following is taken from 2003 Senate Bill No. 275  
(Printer's No. 275):<sup>73</sup>***

§ 5324. Standing for any form of physical custody, legal custody or visitation.

The following individuals may file an action under this chapter for any form of physical custody, legal custody or visitation:

- (1) A parent of the child.
- (2) A person who stands in loco parentis to the child.
- (3) A grandparent of the child who is not in loco parentis to the child:
  - (i) whose relationship with the child began either with the consent of a parent of the child or pursuant to a court order;
  - (ii) who assumes or is willing to assume responsibility for the child; and
  - (iii) when one of the following conditions is met:
    - (A) the child has been determined to be a dependent child pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters);
    - (B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or
    - (C) the child has for a period of at least 12 consecutive months resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

§ 5325. Standing for partial physical custody and visitation.

In addition to situations set forth in section 5324 (relating to standing for any form of physical custody, legal custody or visitation), grandparents and great-grandparents may file an action under this chapter for partial physical custody or visitation in the following situations:

- (1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;
- (2) where the parents of the child have been separated for a period of at least six months or have commenced and continued a proceeding to dissolve their marriage; or
- (3) when the child has for a period of at least 12 consecutive months resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, an action must be filed within six months after the removal of the child from the home.

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<sup>73</sup> Only those provisions containing differences with 2002 Senate Bill No. 1260 (Printer's No. 2383) are replicated here.



*The following is taken from 2005 Senate Bill No. 74  
(Printer's No. 1951):<sup>74</sup>*

§ 5321.1. DECLARATION OF POLICY.

THE GENERAL ASSEMBLY DECLARES THAT IT IS THE PUBLIC POLICY OF THIS COMMONWEALTH, WHEN IN THE BEST INTEREST OF THE CHILD, TO ASSURE A REASONABLE AND CONTINUING CONTACT OF THE CHILD WITH BOTH PARENTS AFTER A SEPARATION OR DISSOLUTION OF THE MARRIAGE AND THE SHARING OF THE RIGHTS AND RESPONSIBILITIES OF CHILD REARING BY BOTH PARENTS AND CONTINUING CONTACT OF THE CHILD OR CHILDREN WITH GRANDPARENTS WHEN A PARENT IS DECEASED, DIVORCED OR SEPARATED.

§ 5323. Award of custody or visitation.

(D) REASONS FOR AWARD.--THE COURT SHALL STATE THE REASONS FOR ITS DECISION IN THE CUSTODY ORDER. THE REASONS MAY BE STATED IN NARRATIVE FORM.

(E) SAFETY CONDITIONS.--AFTER CONSIDERING THE FACTORS UNDER SECTION 5328(A)(6), IF THE COURT FINDS THAT THERE IS AN ONGOING RISK OF HARM TO THE CHILD OR AN ABUSED PARTY AND AWARDS ANY FORM OF CUSTODY OR VISITATION TO A PARTY WHO COMMITTED THE ABUSE OR WHO HAS A HOUSEHOLD MEMBER WHO COMMITTED THE ABUSE, THE COURT SHALL INCLUDE IN THE CUSTODY ORDER SAFETY CONDITIONS DESIGNED TO PROTECT THE CHILD OR THE ABUSED PARTY.

~~(d)~~ (F) Enforcement.--In awarding custody or visitation, the court shall specify the terms and conditions of the award in sufficient detail to enable a party to enforce the court order through law enforcement authorities.

~~(e)~~ (G) Contempt for noncompliance with any custody or visitation order.--

(1) A party who willfully fails to comply with any custody or visitation order may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:

- (i) Imprisonment for a period of not more than six months.
- (ii) A fine of not more than \$500.
- (iii) Probation for a period of not more than six months.
- (iv) An order for nonrenewal, suspension or denial of operating privilege pursuant to section 4355 (relating to denial or suspension of licenses).
- (v) Counsel fees and costs.

(2) An order committing an individual to jail under this section shall specify the condition which, when fulfilled, will result in the release of that individual.

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<sup>74</sup> Only those differences with 2005 Senate Bill No. 74 (Printer's No. 1150) are replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions.

(H) Parties in same residence.--Parties living separate and apart in the same residence may seek relief under this chapter, but any custody or visitation order made under such a circumstance shall be effective only upon:

- (1) one party physically vacating the residence; or
- (2) an order awarding one party exclusive possession of the residence.

§ 5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody or visitation, the court shall determine the best interest of the child by considering all relevant factors, including the following:

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (2) The parental duties performed by each party on behalf of the child.
- (3) The need for stability and continuity in the child's education, family life and community life.
- (4) The availability of extended family.
- (5) The child's sibling relationships.
- (6) The present and past abuse committed by a party or member of the party's household AND WHETHER THERE IS A CONTINUED RISK OF HARM TO THE CHILD OR AN ABUSED PARTY.
- (7) The well-reasoned preference of the child, based on the child's maturity and judgment.
- (8) The attempts of a parent to turn the child against the other parent.
- (9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.
- (10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.
- (11) The proximity of the residences of the parties.
- (12) Each party's availability to care for the child or ability to make appropriate child care arrangements.
- (13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A PARTY'S EFFORT TO PROTECT A CHILD FROM ABUSE BY ANOTHER PARTY IS NOT EVIDENCE OF UNWILLINGNESS OR INABILITY TO COOPERATE WITH THAT PARTY.
- (14) The history of drug or alcohol abuse of a party or member of a party's household.
- (15) The mental and physical condition of a party or member of a party's household.
- (16) Any other relevant factor.

§ 5333. Counseling as part of order.

(b) Abuse.--In situations involving abuse, the court may order individual counseling for the abuser, BUT MAY NOT ORDER THE PARTIES TO ATTEND JOINT COUNSELING.

§ 5336. Access to records and information.

(b) Nondisclosure of confidential information.--The court shall not order the disclosure of any of the following information to any parent or party granted custody or visitation:

- (1) The address of a victim of abuse.
- (2) Confidential information from an abuse counselor or shelter.
- (3) INFORMATION PROTECTED UNDER CHAPTER 67 (RELATING TO DOMESTIC AND SEXUAL VIOLENCE VICTIM ADDRESS CONFIDENTIALITY).

~~(3)~~ (4) Information independently protected from disclosure by the child's right to confidentiality under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, or any other statute.

§ 5337. Relocation.

(g) Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors:

- (1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.
- (2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.
- (3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.
- (4) The child's preference, taking into consideration the age and maturity of the child.
- (5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.
- (6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.
- (7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.
- (8) The reasons and motivation of each party for seeking or opposing the relocation.
- (9) THE PRESENT AND PAST ABUSE COMMITTED BY A PARTY OR MEMBER OF THE PARTY'S HOUSEHOLD AND WHETHER THERE IS A CONTINUED RISK OF HARM TO THE CHILD OR AN ABUSED PARTY.
- ~~(9)~~ (10) Any other factor affecting the best interest of the child.

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

~~Under this chapter, a court may award reasonable interim or final counsel fees, costs and expenses to any party, based on any relevant factor including, but not limited to, the following:~~

- ~~(1) The good faith conduct of the parties.~~
- ~~(2) The relative financial resources of the parties, including the ability of a party to participate in custody litigation.~~
- ~~(3) The need of a party to engage experts.~~
- ~~(4) The best interest of the child.~~

UNDER THIS CHAPTER, A COURT MAY AWARD REASONABLE INTERIM OR FINAL COUNSEL FEES, COSTS AND EXPENSES TO A PARTY IF THE COURT FINDS THAT THE CONDUCT OF ANOTHER PARTY WAS OBDURATE, VEXATIOUS, REPETITIVE OR IN BAD FAITH.

*The following is taken from 2009 House Bill No. 1639  
(Printer's No. 2037):*

AN ACT

Amending Titles 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for contempt for noncompliance with visitation or partial custody order and for child custody; and making conforming amendments.

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

**Section 1.** Section 4346, Chapter 53 and Subchapter A headings and sections 5301, 5302, 5303, 5304, 5305, 5306, 5307, 5308 and 5309, of Title 23 of the Pennsylvania Consolidated Statutes are repealed:

[§ 4346. Contempt for noncompliance with visitation or partial custody order.

(a) General rule.--A party who willfully fails to comply with any visitation or partial custody order may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:

(1) Imprisonment for a period not to exceed six months.

(2) A fine not to exceed \$500.

(3) Probation for a period not to exceed six months.

(4) An order for nonrenewal, suspension or denial of operating privilege pursuant to section 4355 (relating to denial or suspension of licenses).

(b) Condition for release.--An order committing a person to jail under this section shall specify the condition which, when fulfilled, will result in the release of the obligor.

CHAPTER 53  
CUSTODY

SUBCHAPTER A  
GENERAL PROVISIONS

§ 5301. Declaration of policy.

The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child, to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and the sharing of the rights and responsibilities of child rearing by both parents and continuing contact of the child or children with grandparents when a parent is deceased, divorced or separated.

§ 5302. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Child.” Any unemancipated person under 18 years of age.

“Legal custody.” The legal right to make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious and educational decisions.

“Partial custody.” The right to take possession of a child away from the custodial parent for a certain period of time.

“Physical custody.” The actual physical possession and control of a child.

“Shared custody.” An order awarding shared legal or shared physical custody, or both, of a child in such a way as to assure the child of frequent and continuing contact with and physical access to both parents.

“Visitation.” The right to visit a child. The term does not include the right to remove a child from the custodial parent’s control.

§ 5303. Award of custody, partial custody or visitation.

(a) General rule.--

(1) In making an order for custody or partial custody, the court shall consider the preference of the child as well as any other factor which legitimately impacts the child’s physical, intellectual and emotional well-being.

(2) In making an order for custody, partial custody or visitation to either parent, the court shall consider, among other factors, which parent is more likely to encourage, permit and allow frequent and continuing contact and physical access between the noncustodial parent and the child.

(3) The court shall consider each parent and adult household member’s present and past violent or abusive conduct which may include, but is not limited to, abusive conduct as defined under the act of October 7, 1976 (P.L.1090, No.218), known as the Protection From Abuse Act.

(b) Consideration of criminal conviction.--If a parent has been convicted of or has pleaded guilty or no contest to an offense as set forth below, the court shall consider such criminal conduct and shall determine that the parent does not pose a threat of harm to the child before making an order of custody, partial custody or visitation to that parent:

- (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- (2) 18 Pa.C.S. § 2901 (relating to kidnapping);
- (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);
- (4) 18 Pa.C.S. § 3121 (relating to rape);
- (5) 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault);
- (6) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);
- (7) 18 Pa.C.S. § 3124.1 (relating to sexual assault);
- (8) 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);
- (9) 18 Pa.C.S. § 3126 (relating to indecent assault);
- (10) 18 Pa.C.S. § 3127 (relating to indecent exposure);
- (11) 18 Pa.C.S. § 4302 (relating to incest);
- (12) 18 Pa.C.S. § 4304 (relating to endangering welfare of children);
- (13) 18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses); or
- (14) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(b.1) Consideration of criminal charge.--

(1) A parent who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) of the charge filed against the other parent for an offense listed in paragraph (2) may move for a temporary custody order or to modify an existing custody, partial custody or visitation order. The temporary custody or modification hearing shall be scheduled expeditiously.

(2) In evaluating any request for temporary custody or modification of a custody, partial custody or visitation order, the court shall consider whether the parent who is or has been charged with an offense listed below poses a risk of harm to the child:

- (i) 18 Pa.C.S. Ch. 25;
- (ii) 18 Pa.C.S. § 2702 (relating to aggravated assault);
- (iii) 18 Pa.C.S. § 2706 (relating to terroristic threats);
- (iv) 18 Pa.C.S. § 2709.1 (relating to stalking);
- (v) 18 Pa.C.S. § 2901;
- (vi) 18 Pa.C.S. § 2902;
- (vii) 18 Pa.C.S. § 2903 (relating to false imprisonment);
- (viii) 18 Pa.C.S. § 3121;
- (ix) 18 Pa.C.S. § 3122.1;
- (x) 18 Pa.C.S. § 3123;
- (xi) 18 Pa.C.S. § 3124.1;
- (xii) 18 Pa.C.S. § 3125;
- (xiii) 18 Pa.C.S. § 3126;
- (xiv) 18 Pa.C.S. § 3127;
- (xv) 18 Pa.C.S. § 3301 (relating to arson and related offenses);
- (xvi) 18 Pa.C.S. § 4302;
- (xvii) 18 Pa.C.S. § 4304;
- (xviii) 18 Pa.C.S. § 6312; and
- (xix) 23 Pa.C.S. § 6114 (relating to contempt for violation of order or agreement).

(3) Failure to apply for information under 42 Pa.C.S. § 1904 or to act under this subsection shall not prejudice any parent in a custody or visitation proceeding.

(b.2) Parent convicted of murder.--No court shall award custody, partial custody or visitation to a parent who has been convicted of murder under 18 Pa.C.S. § 2502(a) (relating to murder of the first degree) of the other parent of the child who is the subject of the order, unless the child is of suitable age and consents to the order.

(c) Counseling.--In making a determination to award custody, partial custody or visitation pursuant to subsection (b), the court shall appoint a qualified professional to provide counseling to an offending parent described in subsection (b) and shall take testimony from that professional regarding the provision of such counseling prior to issuing any order of custody, partial custody or visitation. Counseling, required in accordance with this subsection, shall include a program of treatment or individual therapy designed to rehabilitate a parent which addresses, but is not limited to, issues regarding physical and sexual abuse, domestic violence, the psychology of the offender and the effects of abuse on the victim. If the court awards custody, partial custody or visitation to an offending parent described in subsection (b), the court may require subsequent periodic counseling and reports on the rehabilitation of the offending parent

and the well-being of the child following an order relating to custody, partial custody or visitation. If, upon review of a subsequent report or reports, the court determines that the offending parent poses a threat of harm to the child, the court may schedule a hearing and modify the order of custody or visitation to protect the well-being of the child.

(d) Sole custody.--The court shall award sole custody when it is in the best interest of the child.

§ 5304. Award of shared custody.

An order for shared custody may be awarded by the court when it is in the best interest of the child:

- (1) upon application of one or both parents;
- (2) when the parties have agreed to an award of shared custody; or
- (3) in the discretion of the court.

§ 5305. Counseling.

(a) General rule.--The court may require the parents to attend counseling sessions and may consider the recommendations of the counselors prior to awarding sole or shared custody. These counseling sessions may include, but shall not be limited to, discussions of the responsibilities and decisionmaking arrangements involved in both sole and shared custody and the suitability of each arrangement to the capabilities of each parent or both parents.

(b) Temporary custody.--The court may temporarily award custody to either parent or both parents pending resolution of any counseling.

(c) Report.--The court may require the counselor to submit a report if the court desires and within such reasonable time as the court determines.

§ 5306. Plan for implementation of custody order.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of any custody order made under this subchapter. Upon the request of either parent or the court, the domestic relations section of the court or other party or agency approved by the court shall assist in the formulation and implementation of the plan.

§ 5307. Denial of custody under agreement or plan.

When the court declines to enter an order awarding custody either as agreed to by the parents or under the plan developed by the parents, the court shall state its reasons for denial on the record.

§ 5308. Removal of party or child from jurisdiction.

If either party intends to or does remove himself or the child from this Commonwealth after a custody order has been made, the court, on its own motion or upon motion of either party, may review the existing custody order.

§ 5309. Access to records and information.

(a) General rule.--Except as provided in subsections (b) and (c), each parent shall be provided access to all the medical, dental, religious or school records of the child, the residence address of the child and of the other parent and any other information that the court deems necessary.

(b) Court determination not to release information.--The court, in its discretion, may determine not to release any part or parts of the information in this section but in doing so must state its reason for denial on the record.

(c) Nondisclosure of confidential information.--The court shall not order that the address of a shelter for battered spouses and their dependent children or otherwise confidential information of a domestic violence counselor be disclosed to the defendant or his counsel or any party to the proceedings.]

**Section 2.** Section 5310 of Title 23, amended October 9, 2008 (P.L.1522, No.127), is repealed:

[§ 5310. Modification of existing custody orders.

Except as provided in 51 Pa.C.S. § 4109 (relating to child custody proceedings during military deployment), any order for the custody of the child of a marriage entered by a court in this Commonwealth or any state may, subject to the jurisdictional requirements set forth in Chapter 54 (relating to uniform child custody jurisdiction and enforcement), be modified at any time to an order of shared custody in accordance with this subchapter.]

**Section 3.** Sections 5311, 5312, 5313, 5314 and 5315 of Title 23 are repealed:

[§ 5311. When parent deceased.

If a parent of an unmarried child is deceased, the parents or grandparents of the deceased parent may be granted reasonable partial custody or visitation rights, or both, to the unmarried child by the court upon a finding that partial custody or visitation rights, or both, would be in the best interest of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.

§ 5312. When parents' marriage is dissolved or parents are separated.

In all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter or when parents have been separated for six months or more, the court may, upon application of the parent or grandparent of a party, grant reasonable partial custody or visitation rights, or both, to the unmarried child if it finds that visitation rights or partial custody, or both, would be in the best interest of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

§ 5313. When grandparents may petition.

(a) Partial custody and visitation.--If an unmarried child has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently removed from the home by his parents, the grandparents or great-grandparents may petition the court for an order granting them reasonable partial custody or visitation rights, or both, to the child. The court shall grant the petition if it finds that visitation rights would be in the best interest of the child and would not interfere with the parent-child relationship.

(b) Physical and legal custody.--A grandparent has standing to bring a petition for physical and legal custody of a grandchild. If it is in the best interest of the child not to be in the custody of either parent and if it is in the best interest of the child to be in the custody of the grandparent, the court may award physical and legal custody to the grandparent. This subsection applies to a grandparent:

- (1) who has genuine care and concern for the child;
- (2) whose relationship with the child began with the consent of a parent of the child or pursuant to an order of court; and
- (3) who for 12 months has assumed the role and responsibilities of the child's parent, providing for the physical, emotional and social needs of the child, or who assumes the responsibility for a child who has been determined to be a dependent child pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who assumes or deems it necessary to assume responsibility for a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or mental illness. The court may issue a temporary order pursuant to this section.

§ 5314. Exception for adopted children.

Sections 5311 (relating to when parent deceased), 5312 (relating to when parents' marriage is dissolved or parents are separated) and 5313 (relating to when child has resided with grandparents) shall not apply if the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption.

§ 5315. Court-appointed child custody health care or behavioral health practitioners.

No party to a child custody matter in which the court has appointed a licensed health care or behavioral health practitioner to assist the court by conducting an examination or evaluation of the parties involved or making a recommendation concerning a child custody agreement or order may be permitted to file a complaint against the practitioner with the practitioner's State licensing board prior to the final agreement or order being issued and for 60 days thereafter. As used in this section, "licensed health care or behavioral health practitioner" means a person who is licensed, certified, accredited or otherwise regulated by the Commonwealth to provide health care or behavioral health services.]

**Section 4.** Title 23 is amended by adding a chapter to read:

CHAPTER 53  
CHILD CUSTODY

Sec.

5321. Scope of chapter.

5321.1. Declaration of policy.

5322. Definitions.

5323. Award of custody.

5324. Standing for any form of physical custody or legal custody.

5325. Standing for partial physical custody and supervised physical custody.

5326. Effect of adoption.

5327. Presumption in cases concerning primary physical custody.

5328. Factors to consider when awarding custody.

5329. Consideration of criminal conviction.

5330. Consideration of criminal charge.

5331. Parenting plan.

5332. Informational programs.

5333. Counseling as part of order.

5334. Guardian ad litem for child.

5335. Counsel for child.

5336. Access to records and information.

5337. Relocation.

5338. Modification of existing order.

5339. Award of counsel fees, costs and expenses.

5340. Court-appointed child custody health care or behavioral health practitioners.

§ 5321. Scope of chapter.

This chapter applies to disputes relating to child custody matters.

§ 5321.1. Declaration of policy.

The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child, that both parents share fully in the rights and responsibilities of raising the child upon separation or dissolution of marriage. It is further the policy of this Commonwealth to maximize the child's time with each parent to assure continuing emotional and physical connection of the child to both separated parents, and when a parent is deceased, divorces or separated, with the grandparents.

§ 5322. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

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

“Agency.” Any organization, society, institution or other entity, including the county children and youth social service agency or court facility, which provides for the care of the child.

“Child.” An unemancipated individual under 18 years of age.

“Legal custody.” The right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.

“Parental duties.” Includes meeting the physical, emotional and social needs of the child.

“Partial physical custody.” The right to assume physical custody of the child for less than a majority of the time.

“Physical custody.” The actual physical possession and control of a child.

“Primary physical custody.” The right to assume physical custody of the child for the majority of time.

“Relocation.” A change in a residence of the child which significantly impairs the ability of a nonrelocating party to exercise custodial rights.

“Shared legal custody.” The right of more than one individual to legal custody of the child.

“Shared physical custody.” The right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child.

“Sole legal custody.” The right of one individual to exclusive legal custody of the child.

“Sole physical custody.” The right of one individual to exclusive physical custody of the child.

“Supervised physical custody.” Custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

#### § 5323. Award of custody.

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

(1) Shared physical custody.

(2) Primary physical custody.

(3) Partial physical custody.

(4) Sole physical custody.

(5) Supervised physical custody.

(6) Shared legal custody.

(7) Sole legal custody.

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

(c) Notice.--Any custody order shall include notice of a party’s obligations under section 5337 (relating to relocation).

(d) Reasons for award.--The court shall delineate the reasons for its decision on the record in open court or in a written opinion.

(e) Safety conditions.--After considering the factors under section 5328(a)(2), if the court finds that there is an ongoing risk of harm to the child or an abused party and awards any form of custody to a party who committed the abuse or who has a household member who committed the abuse, the court shall include in the custody order safety conditions designed to protect the child or the abused party.

(f) Enforcement.--In awarding custody, the court shall specify the terms and conditions of the award in sufficient detail to enable a party to enforce the court order through law enforcement authorities.

(g) Contempt for noncompliance with any custody order.--

(1) A party who willfully fails to comply with any custody order may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:

(i) Imprisonment for a period of not more than six months.

(ii) A fine of not more than \$500.

(iii) Probation for a period of not more than six months.

(iv) An order for nonrenewal, suspension or denial of operating privilege under section 4355 (relating to denial or suspension of licenses).

(v) Counsel fees and costs.

(2) An order committing an individual to jail under this section shall specify the condition which, when fulfilled, will result in the release of that individual.

(h) Parties in same residence.--Parties living separate and apart in the same residence may seek relief under this chapter, but any custody order made under such a circumstance shall be effective only upon:

(1) one party physically vacating the residence; or

(2) an order awarding one party exclusive possession of the residence.

§ 5324. Standing for any form of physical custody or legal custody.

The following individuals may file an action under this chapter for any form of physical custody or legal custody:

(1) A parent of the child.

(2) A person who stands in loco parentis to the child.

(3) A grandparent of the child who is not in loco parentis to the child:

(i) whose relationship with the child began either with the consent of a parent of the child or under a court order;

(ii) who assumes or is willing to assume responsibility for the child; and

(iii) when one of the following conditions is met:

(A) the child has been determined to be a dependent child under 42 Pa.C.S. Ch. 63 (relating to juvenile matters);

(B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or

(C) the child has for a period of at least 12 consecutive months resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

§ 5325. Standing for partial physical custody and supervised physical custody.

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

(1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;

(2) where the parents of the child have been separated for a period of at least six months or have commenced and continued a proceeding to dissolve their marriage; or

(3) when the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, an action must be filed within six months after the removal of the child from the home.

§ 5326. Effect of adoption.

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

§ 5327. Presumption in cases concerning primary physical custody.

(a) Between parents.--In any action regarding the custody of the child between the parents of the child, there shall be no presumption that custody should be awarded to a particular parent.

(b) Between a parent and third party.--In any action regarding the custody of the child between a parent of the child and a nonparent, there shall be a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.

(c) Between third parties.--In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party.

§ 5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, including the following:

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

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

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

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

(5) The availability of extended family.

(6) The child's sibling relationships.

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

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

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

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

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

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

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

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

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

(16) Any other relevant factor.

(b) Gender neutral.--The court shall be gender neutral in making a determination under subsection (a). No party shall receive preference based solely upon gender in any award granted under this chapter.

(c) Grandparents and great-grandparents.--

(1) In ordering partial physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2) (relating to standing for partial physical custody and supervised physical custody), the court shall consider the following:

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

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

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

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

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

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

§ 5329. Consideration of criminal conviction.

(a) Offenses.--Where a party seeks any form of custody, the court shall consider whether that party or member of that party's household has been convicted of or has

pleaded guilty or no contest to any of the following offenses or an offense in another jurisdiction substantially equivalent to any of the following offenses:

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

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

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

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

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

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

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

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

18 Pa.C.S. § 3121 (relating to rape).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Parent convicted of murder.--No court shall award custody, partial custody or supervised physical custody to a parent who has been convicted of murder under 18 Pa.C.S. § 2502(a) (relating to murder) of the other parent of the child who is the subject of the order unless the child is of suitable age and consents to the order.

(c) Initial evaluation.--The court shall provide for an evaluation to determine whether:

(1) the party or household member who committed an offense under subsection (a) poses a threat to the child; and

(2) counseling is necessary for that party or household member.

(d) Counseling.--

(1) Where the court determines under subsection (c) that counseling is necessary, it shall appoint a qualified professional specializing in treatment relating to the particular offense to provide counseling to the offending individual.

(2) Counseling may include a program of treatment or individual therapy designed to rehabilitate the offending individual which addresses, but is not limited to, issues regarding physical and sexual abuse, the psychology of the offender and the effects of the offense on the victim.

(e) Subsequent evaluation.--

(1) At any time during or subsequent to the counseling under subsection (d), the court may require another evaluation to determine whether further counseling is necessary.

(2) If the court awards custody to a party who committed an offense under subsection (a) or who shares a household with an individual who committed an offense under subsection (a), the court may require subsequent evaluations on the rehabilitation of the offending individual and the well-being of the child subsequent to the order. If upon review of a subsequent evaluation the court determines that the offending individual poses a threat of physical, emotional or psychological harm to the child, the court may schedule a hearing to modify the custody order.

(f) Costs.--The court may order a party to pay all or part of the costs of the counseling and evaluations under this section.

#### § 5330. Consideration of criminal charge.

(a) Expedited hearing.--A party who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) or otherwise about a charge filed against the other party for an offense listed under section 5329(a) (relating to consideration of criminal conviction) may move for a temporary custody order or modification of an existing custody order. The court shall hold the hearing under this subsection in an expeditious manner.

(b) Risk of harm.--In evaluating any request under subsection (a), the court shall consider whether the party who is or has been charged with an offense set forth in section 5329(a) poses a risk of physical, emotional or psychological harm to the child.

(c) No prejudice.--Failure to either apply for information under 42 Pa.C.S. § 1904 or act under this section shall not prejudice any party in a custody proceeding.

#### § 5331. Parenting plan.

(a) Purpose.--In a contested custody proceeding, the court shall require the parties to submit parenting plans for the care and custody of the child to aid the court in resolving the custody dispute. A parenting plan and the position of a party as set forth in that parenting plan shall not be admissible as evidence by another party.

(b) Contents.--A parenting plan shall include the following:

(1) The schedule for personal care and control of the child, including parenting time, holidays and vacations.

(2) The education and religious involvement, if any, of the child.

(3) The health care of the child.

(4) Child-care arrangements.

(5) Transportation arrangements.

(6) A procedure by which proposed changes, disputes and alleged breaches of the custody order may be adjudicated or otherwise resolved through mediation, arbitration or other means.

(7) Any matter specified by the court.

(8) Any other matter that serves the best interest of the child.

§ 5332. Informational programs.

(a) Attendance.--The court may direct the parties to attend informational programs concerning parental duties.

(b) Process not delayed.--Subsequent proceedings and the entry of any order or decree shall not be delayed because of the lack of participation in any informational program by one of the parties.

(c) Costs.--The court may order a party to pay all or part of the costs of the informational programs under this section.

§ 5333. Counseling as part of order.

(a) Attendance.--The court may, as part of a custody order, require the parties to attend counseling sessions.

(b) Abuse.--In situations involving abuse, the court may order individual counseling for the abuser but may not order the parties to attend joint counseling.

(c) Verification.--Each party's participation in the counseling sessions shall be verified by the counselor.

(d) Costs.--The court may order a party to pay all or part of the costs of the counseling sessions under this section.

§ 5334. Guardian ad litem for child.

(a) Appointment.--The court may appoint a guardian ad litem for the child. The court shall specify the terms of the appointment, including the role, duties and scope of authority of the guardian ad litem.

(b) Investigation and report.--The guardian ad litem shall investigate and report to the court information relevant to the custody proceeding.

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

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

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

(d) Subject to examination.--A guardian ad litem who submits a report or makes a recommendation to the court shall be subject to examination by the parties.

(e) Costs.--The court may order a party to pay all or part of the costs of appointing a guardian ad litem under this section.

§ 5335. Counsel for child.

(a) Appointment.--The court may appoint counsel to represent the child if the court determines that the appointment will assist in resolving the issues in the custody proceeding.

(b) Abuse.--Substantial allegations of abuse of the child constitute a reasonable basis for appointing counsel for the child.

(c) Not subject to examination.--Counsel appointed by the court for the child shall not be subject to examination unless such counsel testifies in the matter.

(d) Costs.--The court may order a party to pay all or part of the costs of appointing counsel for the child under this section.

§ 5336. Access to records and information.

(a) General rule.--Except as provided in subsections (b) and (c):

(1) A party granted sole or shared legal custody under section 5323 (relating to award of custody) shall be provided access to:

(i) the medical, dental, religious and school records of the child;

(ii) the address of the child and any other party; and

(iii) any other information that the court deems necessary or proper.

(2) Access to any records and information pertaining to the child may not be denied solely based upon a parent's physical custody schedule.

(3) Upon request, a parent, party or entity possessing any information set forth in paragraph (1) shall provide it to any party granted sole or shared legal custody.

(b) Nondisclosure of confidential information.--The court shall not order the disclosure of any of the following information to any parent or party granted custody:

(1) The address of a victim of abuse.

(2) Confidential information from an abuse counselor or shelter.

(3) Information protected under Chapter 67 (relating to domestic and sexual violence victim address confidentiality).

(4) Information independently protected from disclosure by the child's right to confidentiality under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, or any other statute.

(c) Other information.--The court may determine not to release information set forth in subsection (a), in which case it shall state the reason for its denial on the record.

§ 5337. Relocation.

(a) Applicability.--This section applies to any proposed relocation.

(b) General rule.--No relocation shall occur unless:

(1) every individual who has custody rights to the child consents to the proposed relocation; or

(2) the court approves the proposed relocation.

(c) Notice.--

(1) The party proposing the relocation shall notify every other individual who has custody rights to the child.

(2) Reasonable notice shall be given no later than:

(i) the 60th day before the date of the proposed relocation; or

(ii) the tenth day after the date that the individual knows of the relocation, if:

(A) the individual did not know and could not reasonably have known of the relocation in sufficient time to comply with the 60-day notice; and

(B) it is not reasonably possible to delay the date of relocation so as to comply with the 60-day notice.

(3) Except as provided by section 5336 (relating to access to records and information), the following information, if available, must be included with the notice of the proposed relocation:

(i) The address of the intended new residence.

(ii) The mailing address, if not the same as the address of the intended new residence.

(iii) The home telephone number of the intended new residence, if available.

(iv) The name of the new school district and school.

(v) The date of the proposed relocation.

(vi) The reasons for the proposed relocation.

(vii) A proposal for a revised custody schedule.

(viii) Any other information which the party proposing the relocation deems appropriate.

(ix) A warning to the nonrelocating party that if the nonrelocating party does not file with the court an objection to the proposed relocation within 30 days after receipt of the notice, that party shall be foreclosed from objecting to the relocation.

(4) If any of the information set forth in paragraph (3) is not known when the notice is sent but is later made known to the party proposing the relocation, then that party shall promptly inform every individual who received notice under this subsection.

(d) Objection to proposed relocation.--

(1) A party entitled to receive notice may file with the court an objection to the proposed relocation and seek a temporary or permanent order to prevent the relocation.

(2) An objection made under this subsection shall be filed with the court within 30 days of receipt of the proposed relocation notice.

(3) If notice of the proposed relocation has been properly given and no objection to the proposed relocation has been filed in court, then it shall be presumed that the nonrelocating party has consented to the proposed relocation.

(4) If a party entitled to notice does not file with the court an objection to the relocation within 30 days after receipt of the notice but later petitions the court for review of the custodial arrangements, the court shall not accept testimony challenging the relocation.

(e) Confirmation of relocation.--If no objection to the proposed relocation is filed under subsection (d), the party proposing the relocation may file the following with the court prior to the relocation:

(1) an affidavit stating that the party provided notice to every individual entitled to notice, the time to file an objection to the proposed relocation has passed and no individual entitled to receive notice has filed an objection to the proposed relocation;

(2) a petition to confirm the relocation and modify any existing custody order; and

(3) a proposed order containing the information set forth in subsection (c)(3).

(f) Hearing.--

(1) The court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before the relocation occurs unless exigent circumstances exist, in which case the relocation may occur pending an expedited full hearing.

(2) If the court approves the proposed relocation, it shall:

(i) modify any existing custody order; or

(ii) establish the terms and conditions of a custody order.

(g) Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors:

(1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

(6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

(7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.

(10) Any other factor affecting the best interest of the child.

(h) Burden of proof.--

(1) The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection (g).

(2) Each party has the burden of establishing the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.

(i) Failure to provide reasonable notice.--The court may consider a failure to provide reasonable notice of a proposed relocation as:

(1) a factor in making a determination regarding the relocation;

(2) a factor in determining whether custody rights should be modified;

(3) a basis for ordering the return of the child to the nonrelocating party if the relocation has occurred without reasonable notice;

(4) sufficient cause to order the party proposing the relocation to pay reasonable expenses and counsel fees incurred by the party objecting to the relocation; and

(5) a ground for contempt and the imposition of sanctions against the party proposing the relocation.

(j) Effect of relocation prior to hearing.--If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.

§ 5338. Modification of existing order.

(a) Best interest of the child.--Upon petition, a court may modify a custody order to serve the best interest of the child.

(b) Applicability.--This section shall apply to any custody order entered by a court of this Commonwealth or any other state subject to the jurisdictional requirements set forth in Chapter 54 (relating to uniform child custody jurisdiction and enforcement).

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

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

§ 5340. Court-appointed child custody health care or behavioral health practitioners.

No party to a child custody matter in which the court has appointed a licensed health care or behavioral health practitioner to assist the court by conducting an examination or evaluation of the parties involved or making a recommendation concerning a child custody agreement or order may be permitted to file a complaint against the practitioner with the practitioner's State licensing board prior to the final agreement or order being issued and for 60 days thereafter. As used in this section, "licensed health care or behavioral health practitioner" means a person who is licensed, certified, accredited or otherwise regulated by the Commonwealth to provide health care or behavioral health services.

**Section 5.** Section 1904(b), (c) and (h) of Title 42 are amended to read:

§ 1904. Availability of criminal charge information in child custody proceedings.

\* \* \*

(b) Criminal charges enumerated.--The criminal charge information that shall be available on the information system shall be limited to the offenses listed in 23 Pa.C.S. § [5303(b.1)(2) (relating to award of custody, partial custody or visitation)] 5329(a) (relating to consideration of criminal conviction).

(c) Application for access to criminal charge information.--To obtain information about charges covered in 23 Pa.C.S. § [5303(b.1)(2)] 5329(a), a parent who has been awarded custody[,] or partial custody [or visitation] or who is a party to a custody proceeding must file an application for access to the information with the office of the prothonotary in the county where the proceeding or order was filed.

(1) A person who knowingly gives false information with the intent to gain information provided for under this section commits an offense under 18 Pa.C.S. § 4904(a) (relating to unsworn falsification to authorities).

(2) The application must be filed with the prothonotary by one of the following methods:

(i) In person, at the office of the prothonotary, by the parent who is filing the application. The applicant must have a valid form of photoidentification available for the inspection of the prothonotary.

(ii) By mailing a notarized application using first class mail.

(iii) By including the application with the original complaint, initial response or any other pleading or motion filed with the prothonotary.

(3) The Administrative Office shall develop the application for access to the criminal charge information system. The following information shall be included in the application:

(i) Docket number of original court filing.

(ii) Date of filing.

(iii) Date of birth of all children involved in the custody proceeding or order.

(iv) A personal access code.

(v) A notice to the parent that additional information relating to criminal history record information is available, as provided for in 18 Pa.C.S. Ch. 91 (relating to criminal history record information).

(vi) A statement verifying that:

(A) the person who is filing for access to the criminal charge information system is the actual person listed on the application;

(B) to the best of the applicant's knowledge and belief, all the information included in the application is true and correct; and

(C) the applicant is a party to the custody proceeding or order that is listed on the application.

(vii) A warning as to the penalty under 18 Pa.C.S. § 4904.

(viii) Any additional information that it is determined to be necessary to expedite the verification of the application and to provide access to the system, as determined by the Administrative Office.

(4) Applications shall be made available through county prothonotaries.

\* \* \*

(h) Information available to parent.--

(1) After applying and qualifying to obtain the criminal charge information provided by the system, a parent may request information by telephone as to whether the other parent has been charged with any offense listed in 23 Pa.C.S. § [5303(b.1)(2)] 5329(a).

(2) The parent shall also be entitled to criminal history record information as provided for in 18 Pa.C.S. Ch. 91, and the parent shall be informed of the availability.

(3) Criminal charge information shall be retained on the system for the period of time as provided for the retention of criminal charges and records under 18 Pa.C.S. Ch. 91 and then only until the youngest child involved in the custody proceeding or order reaches 18 years of age. At no time shall information be retained on the system beyond what is permitted under 18 Pa.C.S. Ch. 91.

\* \* \*

**Section 6.** A proceeding under the former provisions of 23 Pa.C.S. Ch. 53 which was commenced before the effective date of this section shall be governed by the law in effect at the time the proceeding was initiated.

**Section 7.** This act shall take effect in 60 days.

*The following is taken from 2009 House Bill No. 1639  
(Printer's No. 3705).<sup>75</sup>*

§ 5321.1. Declaration of policy.

The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child, that both parents share fully in the rights and responsibilities of raising the child upon separation or dissolution of marriage. It is further the policy of this Commonwealth to maximize the child's time with each parent to assure continuing emotional and physical connection of the child to both separated parents, and when a parent is deceased, divorces or separated, with the grandparents.

§ 5323. Award of custody.

(d) Reasons for award.--The court shall delineate the reasons for its decision on the record in open court or in a written opinion OR ORDER.

§ 5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, GIVING WEIGHTED CONSIDERATION TO THOSE FACTORS WHICH AFFECT THE SAFETY OF THE CHILD, including the following:

§ 5329. Consideration of criminal conviction.

(a) Offenses.--Where a party seeks any form of custody, the court shall consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any of the following offenses or an offense in another jurisdiction substantially equivalent to any of OFFENSES IN THIS SECTION OR AN OFFENSE IN ANOTHER JURISDICTION SUBSTANTIALLY EQUIVALENT TO ANY OF THE OFFENSES IN THIS SECTION. THE COURT SHALL CONSIDER SUCH CONDUCT AND DETERMINE THAT THE PARTY DOES NOT POSE A THREAT OF HARM TO THE CHILD BEFORE MAKING AN ORDER OF CUSTODY, PARTIAL CUSTODY OR VISITATION TO THAT PARENT WHEN CONSIDERING the following offenses:

§ 5331. Parenting plan.

(a) Purpose.--In a contested custody proceeding, the court shall MAY require the parties to submit parenting plans for the care and custody of the child to aid the court in resolving the custody dispute. A parenting plan and the position of a party as set forth in that parenting plan shall not be admissible as evidence by another party.

(b) Contents.--A parenting plan shall include the following:

(1) The schedule for personal care and control of the child, including parenting time, holidays and vacations.

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<sup>75</sup> Only those differences with 2009 House Bill No. 1639 (Printer's No. 2037) are replicated here. However, differences that are solely technical in nature are not replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions.

(2) The education and religious involvement, if any, of the child.

(3) The health care of the child.

(4) Child-care arrangements.

(5) Transportation arrangements.

(6) A procedure by which proposed changes, disputes and alleged breaches of the custody order may be adjudicated or otherwise resolved through mediation, arbitration or other means.

(7) Any matter specified by the court.

(8) Any other matter that serves the best interest of the child.

THE COURT SHALL CONSIDER THE FINANCIAL RESOURCES OF THE PARTIES WHEN THE COURT REQUIRES THE PARTIES TO SUBMIT PARENTING PLANS.

§ 5334. Guardian ad litem for child.

~~(d) Subject to examination. A guardian ad litem who submits a report or makes a recommendation to the court shall be subject to examination by the parties.~~

(D) EVIDENCE SUBJECT TO EXAMINATION.--

(1) A LAWYER APPOINTED AS GUARDIAN AD LITEM MAY NOT TESTIFY EXCEPT AS AUTHORIZED BY RULE 3.7 OF THE RULES OF PROFESSIONAL CONDUCT, BUT MAY MAKE LEGAL ARGUMENT BASED ON RELEVANT EVIDENCE THAT SHALL BE SUBJECT TO EXAMINATION BY THE PARTIES.

(2) A NONLAWYER APPOINTED AS GUARDIAN AD LITEM MAY TESTIFY REGARDING AND MAY SUBMIT A REPORT REGARDING THE GUARDIAN AD LITEM'S RECOMMENDATION RELATING TO THE CHILD'S BEST INTEREST, WHICH SHALL BE SUBJECT TO EXAMINATION.

§ 5337. Relocation.

(g) Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors, GIVING WEIGHTED CONSIDERATION TO THOSE FACTORS WHICH AFFECT THE SAFETY OF THE CHILD:

(j) MITIGATION.--ANY CONSIDERATION OF A FAILURE TO PROVIDE REASONABLE NOTICE UNDER SUBSECTION (I) SHALL BE SUBJECT TO MITIGATION IF THE COURT DETERMINES THAT SUCH FAILURE WAS CAUSED IN WHOLE, OR IN PART, BY ABUSE.

(K) Effect of relocation prior to hearing.--If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.

*The following is taken from 2009 House Bill No. 1639  
(Printer's No. 3884).<sup>76</sup>*

§ 5329. Consideration of criminal conviction.

(a) Offenses.--Where a party seeks any form of custody, the court shall consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any of the offenses in this section or an offense in another jurisdiction substantially equivalent to any of the offenses in this section. The court shall consider such conduct and determine that the party does not pose a threat of harm to the child before making an order of custody, partial custody or visitation ANY ORDER OF CUSTODY to that parent when considering the following offenses:

§ 5331. Parenting plan.

(b) Contents.--A parenting plan shall include the following:

- (1) The schedule for personal care and control of the child, including parenting time, holidays and vacations.
- (2) The education and religious involvement, if any, of the child.
- (3) The health care of the child.
- (4) Child-care arrangements.
- (5) Transportation arrangements.
- (6) A procedure by which proposed changes, disputes and alleged breaches of the custody order may be adjudicated or otherwise resolved through mediation, arbitration or other means.
- (7) Any matter specified by the court.
- (8) Any other matter that serves the best interest of the child.

~~The court shall consider the financial resources of the parties when the court requires the parties to submit parenting plans.~~

(C) FORM.--IF THE COURT ORDERS THE PARTIES TO PROPOSE A PARENTING PLAN, IT SHALL BE SUBMITTED TO THE COURT IN SUBSTANTIALLY THE FOLLOWING FORM:

CAPTION

PARENTING PLAN

THIS PARENTING PLAN INVOLVES THE FOLLOWING CHILD/CHILDREN:

<u>CHILD'S NAME</u>	<u>AGE</u>	<u>WHERE DOES THIS CHILD LIVE?</u>
<u>1.....</u>	<u>.....</u>	<u>.....</u>
<u>2.....</u>	<u>.....</u>	<u>.....</u>
<u>3.....</u>	<u>.....</u>	<u>.....</u>

IF YOU HAVE CHILDREN NOT ADDRESSED BY THIS PARENTING PLAN, NAME HERE:

---

<sup>76</sup> Only those differences with 2009 House Bill No. 1639 (Printer's No. 3705) are replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions.

<u>CHILD'S NAME</u>	<u>AGE</u>	<u>WHERE DOES THIS CHILD LIVE?</u>
1.....	.....	.....
2.....	.....	.....
3.....	.....	.....

LEGAL CUSTODY (WHO MAKES DECISIONS ABOUT CERTAIN THINGS):

CIRCLE ONE

DIET..... BOTH PARTIES DECIDE TOGETHER / PLAINTIFF / DEFENDANT

RELIGION..... BOTH PARTIES DECIDE TOGETHER / PLAINTIFF / DEFENDANT

MEDICAL CARE... BOTH PARTIES DECIDE TOGETHER / PLAINTIFF / DEFENDANT

MENTAL HEALTH CARE... BOTH PARTIES DECIDE TOGETHER / PLAINTIFF / DEFENDANT

DISCIPLINE..... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF / DEFENDANT

CHOICE OF SCHOOL.... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF / DEFENDANT

CHOICE OF STUDY.... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF / DEFENDANT

SCHOOL ACTIVITIES... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF / DEFENDANT

SPORTS ACTIVITIES... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF / DEFENDANT

ADDITIONAL ITEMS... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF / DEFENDANT

EXPLAIN WHAT PROCESS YOU WILL USE TO MAKE DECISIONS?

(FOR EXAMPLE, THE PARENT CONFRONTED WITH OR ANTICIPATING THE CHOICE WILL CALL THE OTHER PARENT WHEN THE CHOICE PRESENTS ITSELF, AND THE OTHER PARENT MUST AGREE OR DISAGREE WITHIN 24 HOURS OF ANY DEADLINE)

.....  
 .....

PHYSICAL CUSTODY (WHERE THE CHILD/CHILDREN LIVE)

THE CHILD'S/CHILDREN'S RESIDENCE IS WITH.....

DESCRIBE WHICH DAYS AND WHICH TIMES OF THE DAY THE CHILD/CHILDREN WILL BE WITH EACH PERSON:

SUNDAY MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY SATURDAY

.....  
 .....

DESCRIBE WHERE AND WHEN THE CHILD/CHILDREN WILL BE DROPPED OFF AND/OR PICKED UP (DAY AND TIME OF DAY)?

DROP-OFF

WHERE.....

WHEN.....

.....

PICK-UP

WHERE .....

WHEN .....

IF ONE OF YOU DOESN'T SHOW UP, HOW LONG WILL THE OTHER WAIT?.....

IF THERE ARE ANY EXTRAORDINARY COSTS (TAXI, TRAIN, AIRPLANE, ETC.), WHO WILL PAY FOR WHICH COSTS?

HOLIDAYS

WHERE WILL THE CHILD/CHILDREN STAY?

<u>HOLIDAY</u>	<u>YEAR A</u>	<u>YEAR B</u>	<u>EVERY YEAR</u>
MARTIN LUTHER KING DAY	.....	.....	.....
PRESIDENT'S DAY	.....	.....	.....
EASTER	.....	.....	.....
MEMORIAL DAY	.....	.....	.....
FOURTH OF JULY	.....	.....	.....
LABOR DAY	.....	.....	.....
YOM KIPPUR	.....	.....	.....
ROSH HASHANAH	.....	.....	.....
THANKSGIVING	.....	.....	.....
VACATION AFTER THANKSGIVING	.....	.....	.....
CHRISTMAS VACATION	.....	.....	.....
KWANZAA	.....	.....	.....
NEW YEAR' EVE/DAY	.....	.....	.....
SPRING VACATION	.....	.....	.....
EASTER SUNDAY	.....	.....	.....
CHILD'S BIRTHDAY	.....	.....	.....
MOTHER'S DAY	.....	.....	.....
FATHER'S DAY	.....	.....	.....
OTHER	.....	.....	.....
OTHER	.....	.....	.....
OTHER	.....	.....	.....

SPECIAL ACTIVITIES OR SCHOOL ACTIVITIES

WILL BOTH OF YOU ATTEND?

<u>CHILD'S NAME</u>	<u>ACTIVITY</u>	<u>IF NOT, WHICH OF YOU WILL ATTEND?</u>
.....	.....	.....
.....	.....	.....
.....	.....	.....

TEMPORARY CHANGES TO THIS PARENTING SCHEDULE  
FROM TIME TO TIME, ONE OF YOU MIGHT WANT OR NEED TO REARRANGE  
THE PARENTING TIME SCHEDULE DUE TO WORK, FAMILY OR OTHER  
EVENTS. YOU CAN ATTEMPT TO AGREE ON THESE CHANGES. IF YOU  
CANNOT AGREE, THE PARENT RECEIVING THE REQUEST WILL MAKE THE  
FINAL DECISION.

THE PARENT ASKING FOR THE CHANGE WILL ASK.....IN PERSON.....BY  
LETTER/MAIL.....BY PHONE NO LATER THAN

....12 HOURS.... 24 HOURS.... 1 WEEK.... 1 MONTH

THE PARENT BEING ASKED FOR A CHANGE WILL REPLY

.... IN PERSON..... BY LETTER/MAIL..... BY PHONE

NO LATER THAN

..... 12 HOURS..... 24 HOURS..... 1 WEEK..... 1 MONTH

MAY PARENTS CONTACT ONE ANOTHER?.....

WHEN THE CHILD/CHILDREN IS/ARE WITH ONE OF YOU, HOW MAY THEY  
CONTACT THE OTHER PARENT?.....

WHEN AND HOW MAY .....CONTACT THE CHILD?

IN THE EVENT THAT PROPOSED CHANGES, DISPUTES OR ALLEGED  
BREACHES OF THIS PARENTING PLAN AND CUSTODY ORDER ARE  
NECESSARY OR DESIRED, THE PARTIES AGREE THAT SUCH CHANGES WILL  
BE ADDRESSED BY THE FOLLOWING METHOD (SPECIFY METHOD OF  
ARBITRATION, MEDIATION, COURT ACTION, ETC.):

THE FOLLOWING MATTER OR MATTERS AS SPECIFIED BY THE COURT:

OTHER (ANYTHING ELSE YOU WANT TO AGREE ON)

DATE.....

.....  
SIGNATURE OF MOTHER

DATE.....

.....  
SIGNATURE OF FATHER

DATE.....

.....  
SIGNATURE OF WITNESS

§ 5334. Guardian ad litem for child.

(a) ~~Appointment. The court may appoint a guardian ad litem for the child. The~~  
~~court shall specify the terms of the appointment, including the role, duties and scope of~~  
~~authority of the guardian ad litem.~~

(b) Investigation and report.--The guardian ad litem shall investigate and report to the court information relevant to the custody proceeding.

(A) APPOINTMENT.--THE COURT MAY ON ITS OWN MOTION OR THE MOTION OF A PARTY APPOINT A GUARDIAN AD LITEM TO REPRESENT THE CHILD IN THE ACTION. THE COURT MAY ASSESS THE COST UPON THE PARTIES OR ANY OF THEM OR AS OTHERWISE PROVIDED BY LAW. THE GUARDIAN AD LITEM MUST BE AN ATTORNEY AT LAW.

(B) POWERS AND DUTIES.--THE GUARDIAN AD LITEM SHALL BE CHARGED WITH REPRESENTATION OF THE LEGAL INTERESTS AND THE BEST INTERESTS OF THE CHILD DURING THE PROCEEDINGS AND SHALL DO ALL OF THE FOLLOWING:

(1) MEET WITH THE CHILD AS SOON AS POSSIBLE FOLLOWING THE APPOINTMENT, AND ON A REGULAR BASIS THEREAFTER IN A MANNER APPROPRIATE TO THE CHILD'S AGE AND MATURITY.

(2) ON A TIMELY BASIS, BE GIVEN ACCESS TO RELEVANT COURT AND COUNTY AGENCY RECORDS, REPORTS OF EXAMINATION OF THE PARENTS OR OTHER CUSTODIAN OF THE CHILD AND MEDICAL, PSYCHOLOGICAL AND SCHOOL RECORDS.

(3) PARTICIPATE IN ALL PROCEEDINGS.

(4) CONDUCT SUCH FURTHER INVESTIGATION NECESSARY TO ASCERTAIN THE FACTS.

(5) INTERVIEW POTENTIAL WITNESSES, INCLUDING THE CHILD'S PARENTS, CARETAKERS AND FOSTER PARENTS, IF ANY, EXAMINE AND CROSS-EXAMINE WITNESSES AND PRESENT WITNESSES AND EVIDENCE NECESSARY TO PROTECT THE BEST INTERESTS OF THE CHILD.

(6) MAKE SPECIFIC RECOMMENDATIONS TO THE COURT RELATING TO THE BEST INTERESTS OF THE CHILD, INCLUDING ANY SERVICES NECESSARY TO ADDRESS THE CHILD'S NEEDS AND SAFETY.

(7) EXPLAIN THE PROCEEDINGS TO THE CHILD TO THE EXTENT APPROPRIATE GIVEN THE CHILD'S AGE, MENTAL CONDITION AND EMOTIONAL CONDITION.

(8) ADVISE THE COURT OF THE CHILD'S WISHES TO THE EXTENT THAT THEY CAN BE ASCERTAINED AND PRESENT TO THE COURT WHATEVER EVIDENCE EXISTS TO SUPPORT THE CHILD'S WISHES. WHEN APPROPRIATE BECAUSE OF THE AGE OR MENTAL AND EMOTIONAL CONDITION OF THE CHILD, DETERMINE TO THE FULLEST EXTENT POSSIBLE THE WISHES OF THE CHILD AND COMMUNICATE THIS INFORMATION TO THE COURT. A DIFFERENCE BETWEEN THE CHILD'S WISHES UNDER THIS PARAGRAPH AND THE RECOMMENDATIONS UNDER PARAGRAPH (6) SHALL NOT BE CONSIDERED A CONFLICT OF INTEREST FOR THE GUARDIAN AD LITEM.

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

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

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

~~(d) Evidence subject to examination.--~~

~~(1) A lawyer appointed as~~

(D) EVIDENCE SUBJECT TO EXAMINATION.--A guardian ad litem may not testify except as authorized by Rule 3.7 of the Rules of Professional Conduct, but may make legal argument based on relevant evidence that shall be subject to examination by the parties.

~~(2) A nonlawyer appointed as guardian ad litem may testify regarding and may submit a report regarding the guardian ad litem's recommendation relating to the child's best interest, which shall be subject to examination.~~

(e) Costs.--The court may order a party to pay all or part of the costs of appointing a guardian ad litem under this section.

§ 5335. Counsel for child.

(a) Appointment.--The court may appoint counsel to represent the child if the court determines that the appointment will assist in resolving the issues in the custody proceeding. IF A CHILD HAS LEGAL COUNSEL AND A GUARDIAN AD LITEM, COUNSEL SHALL REPRESENT THE LEGAL INTERESTS OF THE CHILD AND THE GUARDIAN AD LITEM SHALL REPRESENT THE BEST INTERESTS OF THE CHILD.

§ 5337. Relocation.

(a) Applicability.--This section applies to any proposed relocation.

(b) General rule.--No relocation shall occur unless:

(1) every individual who has custody rights to the child consents to the proposed relocation; or

(2) the court approves the proposed relocation.

(c) Notice.--

(1) The party proposing the relocation shall notify every other individual who has custody rights to the child.

(2) ~~Reasonable notice~~ NOTICE, SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, shall be given no later than:

(i) the 60th day before the date of the proposed relocation; or

(ii) the tenth day after the date that the individual knows of the relocation, if:

(A) the individual did not know and could not reasonably have known of the relocation in sufficient time to comply with the 60-day notice; and

(B) it is not reasonably possible to delay the date of relocation so as to comply with the 60-day notice.

(3) Except as provided by section 5336 (relating to access to records and information), the following information, if available, must be included with the notice of the proposed relocation:

(i) The address of the intended new residence.

(ii) The mailing address, if not the same as the address of the intended new residence.

(III) NAMES AND AGES OF THE INDIVIDUALS IN THE NEW RESIDENCE, INCLUDING INDIVIDUALS WHO INTEND TO LIVE IN THE NEW RESIDENCE.

(iii) (IV) The home telephone number of the intended new residence, if available.

(iv) (V) The name of the new school district and school.

(v) (VI) The date of the proposed relocation.

(vi) (VII) The reasons for the proposed relocation.

(vii) (VIII) A proposal for a revised custody schedule.

(viii) (IX) Any other information which the party proposing the relocation deems appropriate.

(X) A COUNTER-AFFIDAVIT AS PROVIDED UNDER SUBSECTION (D)(1) WHICH CAN BE USED TO OBJECT TO THE PROPOSED RELOCATION AND THE MODIFICATION OF A CUSTODY ORDER.

(ix) (XI) A warning to the nonrelocating party that if the nonrelocating party does not file with the court an objection to the proposed relocation within 30 days after receipt of the notice, that party shall be foreclosed from objecting to the relocation.

(4) If any of the information set forth in paragraph (3) is not known when the notice is sent but is later made known to the party proposing the relocation, then that party shall promptly inform every individual who received notice under this subsection.

(d) Objection to proposed relocation.--

(1) A party entitled to receive notice may file with the court an objection to the proposed relocation and seek a temporary or permanent order to prevent the relocation. THE NONRELOCATING PARTY SHALL HAVE THE OPPORTUNITY TO INDICATE WHETHER HE OR SHE OBJECTS TO RELOCATION OR NOT, AND WHETHER HE OR SHE OBJECTS TO MODIFICATION OF THE CUSTODY ORDER OR NOT. IF THE PARTY OBJECTS TO EITHER RELOCATION OR MODIFICATION OF THE CUSTODY ORDER, A HEARING SHALL BE HELD AS PROVIDED IN SUBSECTION (G). THE OBJECTION SHALL BE MADE BY COMPLETING AND RETURNING TO THE COURT A COUNTER-AFFIDAVIT, WHICH SHALL BE VERIFIED SUBJECT TO PENALTIES UNDER 18 PA.C.S. § 4904 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES), IN SUBSTANTIALLY THE FOLLOWING FORM:

COUNTER-AFFIDAVIT REGARDING RELOCATION

THIS PROPOSAL OF RELOCATION INVOLVES THE FOLLOWING CHILD/CHILDREN:

<u>CHILD'S NAME</u>	<u>AGE</u>	<u>CURRENTLY RESIDING AT:</u>
.....	.....	.....
<u>CHILD'S NAME</u>	<u>AGE</u>	<u>CURRENTLY RESIDING AT:</u>
.....	.....	.....
<u>CHILD'S NAME</u>	<u>AGE</u>	<u>CURRENTLY RESIDING AT:</u>
.....	.....	.....

I HAVE RECEIVED A NOTICE OF PROPOSED RELOCATION AND

1. .... I DO NOT OBJECT TO THE RELOCATION AND I DO NOT OBJECT TO THE MODIFICATION OF THE CUSTODY ORDER CONSISTENT WITH THE PROPOSAL FOR REVISED CUSTODY SCHEDULE AS ATTACHED TO THE NOTICE.

2. .... I DO NOT OBJECT TO THE RELOCATION, BUT I DO OBJECT TO MODIFICATION OF THE CUSTODY ORDER, AND I REQUEST THAT A HEARING BE SCHEDULED:

A. .... PRIOR TO ALLOWING (NAME OF CHILD/CHILDREN) TO RELOCATE.

B. .... AFTER THE CHILD/CHILDREN RELOCATE.

3. .... I DO OBJECT TO THE RELOCATION AND I DO OBJECT TO THE MODIFICATION OF THE CUSTODY ORDER, AND I FURTHER REQUEST THAT A HEARING BE HELD ON BOTH MATTERS PRIOR TO THE RELOCATION TAKING PLACE.

.....  
I UNDERSTAND THAT IN ADDITION TO CHECKING (2) OR (3) ABOVE, I MUST ALSO FILE THIS NOTICE WITH THE COURT IN WRITING AND SERVE IT ON THE OTHER PARTY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. IF I FAIL TO DO SO WITHIN 30 DAYS OF MY RECEIPT OF THE PROPOSED RELOCATION NOTICE, I SHALL BE FORECLOSED FROM OBJECTING TO THE RELOCATION.

.....  
I VERIFY THAT THE STATEMENTS MADE IN THIS COUNTER-AFFIDAVIT ARE TRUE AND CORRECT. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 PA.C.S. § 4904 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES).

DATE:

.....  
(2) An objection made under this subsection shall be filed with the court within 30 days of receipt of the proposed relocation notice, AND SERVED ON THE OTHER PARTY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

(3) If notice of the proposed relocation has been properly given and no objection to the proposed relocation has been filed in court, then it shall be presumed that the nonrelocating party has consented to the proposed relocation.

(4) If a party ~~entitled to~~ WHO HAS BEEN GIVEN PROPER notice does not file with the court an objection to the relocation within 30 days after receipt of the notice but later petitions the court for review of the custodial arrangements, the court shall not accept testimony challenging the relocation.

(e) Confirmation of relocation.--If no objection to the proposed relocation is filed under subsection (d), the party proposing the relocation ~~may~~ SHALL file the following with the court prior to the relocation:

(1) an affidavit stating that the party provided notice to every individual entitled to notice, the time to file an objection to the proposed relocation has passed and no individual entitled to receive notice has filed an objection to the proposed relocation;

(2) PROOF THAT PROPER NOTICE WAS GIVEN IN THE FORM OF A RETURN RECEIPT WITH THE SIGNATURE OF THE ADDRESSEE AND THE FULL NOTICE THAT WAS SENT TO THE ADDRESSEE.

~~(2)~~ (3) a petition to confirm the relocation and modify any existing custody order;  
and

~~(3)~~ (4) a proposed order containing the information set forth in subsection (c)(3).

(F) MODIFICATION OF CUSTODY ORDER.--IF A COUNTER-AFFIDAVIT REGARDING RELOCATION IS FILED WITH THE COURT WHICH INDICATES THE NONRELOCATING PARTY BOTH HAS NO OBJECTION TO THE PROPOSED RELOCATION AND NO OBJECTION TO THE MODIFICATION OF THE CUSTODY ORDER CONSISTENT WITH THE PROPOSAL FOR REVISED CUSTODY SCHEDULE, THE COURT MAY MODIFY THE EXISTING CUSTODY ORDER BY APPROVING THE PROPOSAL FOR REVISED CUSTODY SCHEDULE SUBMITTED UNDER SECTION 5337(C)(VIII), AND SHALL SPECIFY THE METHOD BY WHICH ITS FUTURE MODIFICATION CAN BE MADE IF DESIRED BY EITHER PARTY. IF A COUNTER-AFFIDAVIT REGARDING RELOCATION IS FILED WITH THE COURT WHICH INDICATES THE NONRELOCATING PARTY OBJECTS EITHER TO THE PROPOSED RELOCATION OR TO THE MODIFICATION OF THE CUSTODY ORDER CONSISTENT WITH THE PROPOSAL FOR REVISED CUSTODY SCHEDULE, THE COURT SHALL MODIFY THE EXISTING CUSTODY ORDER ONLY AFTER HOLDING A HEARING TO ESTABLISH THE TERMS AND CONDITIONS OF THE ORDER PURSUANT TO THE RELOCATION INDICATING THE RIGHTS, IF ANY, OF THE NONRELOCATING PARTIES. THE COURT SHALL DETERMINE WHETHER SUCH HEARING SHOULD OCCUR EXPEDITIOUSLY PRIOR TO THE RELOCATION OF THE CHILD OR CHILDREN, OR WHETHER IT CAN BE HELD AT A DATE FOLLOWING RELOCATION.

~~(F)~~ (G) Hearing.--

(1) The court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before the relocation occurs unless exigent circumstances exist, in which case the relocation may occur pending an expedited full hearing.

(2) If the court approves the proposed relocation, it shall:

(i) modify any existing custody order; or

(ii) establish the terms and conditions of a custody order.

~~(g)~~ (H) Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

(1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

(6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

(7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.

(10) Any other factor affecting the best interest of the child.

(h) (I) Burden of proof.--

(1) The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection (g).

(2) Each party has the burden of establishing the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.

(i) (J) Failure to provide reasonable notice.--The court may consider a failure to provide reasonable notice of a proposed relocation as:

(1) a factor in making a determination regarding the relocation;

(2) a factor in determining whether custody rights should be modified;

(3) a basis for ordering the return of the child to the nonrelocating party if the relocation has occurred without reasonable notice;

(4) sufficient cause to order the party proposing the relocation to pay reasonable expenses and counsel fees incurred by the party objecting to the relocation; and

(5) a ground for contempt and the imposition of sanctions against the party proposing the relocation.

(j) (K) Mitigation.--Any consideration of a failure to provide reasonable notice under subsection (i) shall be subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.

(k) (L) Effect of relocation prior to hearing.--If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.

*The following is taken from 2009 House Bill No. 1639  
(Printer's No. 4280):<sup>77</sup>*

§ 5322. Definitions.

(A) THIS CHAPTER.--The following words and phrases when used in this chapter shall have the meanings given to them in this section SUBSECTION unless the context clearly indicates otherwise:

(B) OTHER LAW.--IN A STATUTORY PROVISION OTHER THAN IN THIS CHAPTER, WHEN THE TERM "VISITATION" IS USED IN REFERENCE TO CHILD CUSTODY, THE TERM MAY BE CONSTRUED TO MEAN:

- (1) PARTIAL PHYSICAL CUSTODY;
- (2) SHARED PHYSICAL CUSTODY; OR
- (3) SUPERVISED PHYSICAL CUSTODY.

§ 5328. Factors to consider when awarding custody.

(b) Gender neutral.--The court shall be gender neutral in IN making a determination under subsection (a ).-No, NO party shall receive preference based solely upon gender in any award granted under this chapter.

§ 5334. Guardian ad litem for child.

(b) Powers and duties.--The guardian ad litem shall be charged with representation of the legal interests and the best interests of the child during the proceedings and shall do all of the following:

(1) Meet IF APPROPRIATE TO THE CHILD'S AGE AND MATURITY, MEET with the child as soon as possible following the appointment, and on a regular basis thereafter in a manner appropriate to the child's age and maturity.

(2) On a timely basis, be given access to relevant court and county agency records, reports of examination of the parents or other custodian of the child and medical, psychological and school records.

(3) Participate in all proceedings.

(4) Conduct such further investigation necessary to ascertain the facts RELEVANT FACTS FOR PRESENTATION TO THE COURT.

(5) Interview potential witnesses, including the child's parents, caretakers and foster parents, if any;. THE GUARDIAN AD LITEM MAY examine and cross-examine witnesses and present witnesses and evidence necessary to protect the best interests of the child.

(6) Make specific recommendations to the court relating to the best interests of the child, including any services necessary to address the child's needs and safety.

(7) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition and emotional condition.

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<sup>77</sup> Only those differences with 2009 House Bill No. 1639 (Printer's No. 3884) are replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions.

(8) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court. A difference between the child's wishes under this paragraph and the recommendations under paragraph (6) shall not be considered a conflict of interest for the guardian ad litem.

§ 5337. Relocation.

(d) Objection to proposed relocation.--

(1) A party entitled to receive notice may file with the court an objection to the proposed relocation and seek a temporary or permanent order to prevent the relocation. The nonrelocating party shall have the opportunity to indicate whether he or she objects to relocation or not, and whether he or she objects to modification of the custody order or not. If the party objects to either relocation or modification of the custody order, a hearing shall be held as provided in subsection (g) (G)(1). The objection shall be made by completing and returning to the court a counter-affidavit, which shall be verified subject to penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), in substantially the following form:

(f) Modification of custody order.--If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party both has no objection to the proposed relocation and no objection to the modification of the custody order consistent with the proposal for revised custody schedule, the court may modify the existing custody order by approving the proposal for revised custody schedule submitted under section 5337(c)(viii), and shall specify the method by which its future modification can be made if desired by either party. If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party objects either to the proposed relocation or to the modification of the custody order consistent with the proposal for revised custody schedule, the court shall modify the existing custody order only after holding a hearing to establish the terms and conditions of the order pursuant to the relocation indicating the rights, if any, of the nonrelocating parties. ~~The court shall determine whether such hearing should occur expeditiously prior to the relocation of the child or children, or whether it can be held at a date following relocation.~~

(g) Hearing.--

(1) ~~The EXCEPT AS SET FORTH IN PARAGRAPH (3), THE~~ court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before the relocation occurs ~~unless exigent circumstances exist, in which case the relocation may occur pending an expedited full hearing.~~

(2) EXCEPT AS SET FORTH IN PARAGRAPH (3), THE COURT MAY, ON ITS OWN MOTION, HOLD AN EXPEDITED FULL HEARING ON THE PROPOSED RELOCATION BEFORE THE RELOCATION OCCURS.

(3) NOTWITHSTANDING PARAGRAPHS (1) AND (2), IF THE COURT FINDS THAT EXIGENT CIRCUMSTANCES EXIST, THE COURT MAY APPROVE THE RELOCATION PENDING AN EXPEDITED FULL HEARING.

- ~~(2)~~ (4) If the court approves the proposed relocation, it shall:
- (i) modify any existing custody order; or
  - (ii) establish the terms and conditions of a custody order.

(i) Burden of proof.--

(1) The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection ~~(g)~~ (H).

(2) Each party has the burden of establishing the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.



*The following is taken from 2009 House Bill No. 1639  
(Printer's No. 4468):<sup>78</sup>*

§ 5322. Definitions.

(A) THIS CHAPTER.--The following words and phrases when used in this chapter shall have the meanings given to them in this section SUBSECTION unless the context clearly indicates otherwise:

“Agency.” Any organization, society, institution, COURT FACILITY or other entity; including the county children and youth social service agency or court facility, which provides for the care of the child. A CHILD. THE TERM DOES NOT INCLUDE A COUNTY CHILDREN AND YOUTH SOCIAL SERVICE AGENCY.

§ 5334. Guardian ad litem for child.

(b) Powers and duties.--The guardian ad litem shall be charged with representation of the legal interests and the best interests of the child during the proceedings and shall do all of the following:

(2) On a timely basis, be given access to relevant court and county agency records, reports of examination of the parents or other custodian of the child and medical, psychological and school records.

(5) Interview potential witnesses, including the child's parents, caretakers and foster parents AND CARETAKERS, if any;. THE GUARDIAN AD LITEM MAY examine and cross-examine witnesses and present witnesses and evidence necessary to protect the best interests of the child.

(6) Make specific recommendation s IN A WRITTEN REPORT to the court relating to the best interests of the child, including any services necessary to address the child's needs and safety. THE COURT SHALL MAKE THE WRITTEN REPORT PART OF THE RECORD SO THAT IT MAY BE REVIEWED BY THE PARTIES. THE PARTIES MAY FILE WITH THE COURT WRITTEN COMMENTS REGARDING THE CONTENTS OF THE REPORT. THE COMMENTS FILED BY THE PARTIES SHALL ALSO BECOME PART OF THE RECORD.

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<sup>78</sup> Only those differences with 2009 House Bill No. 1639 (Printer's No. 4280) are replicated here. Capitalized language indicates newly added provisions, while strike-through language indicates newly deleted provisions.



## **APPENDIX 4: SELECT ALIMONY LEGISLATION**

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2008 Senate Bill No. 1520 (Printer's No. 2290)



*The following is taken from 2008 Senate Bill No. 1520  
(Printer's No. 2290):*

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, repealing and adding provisions relating to alimony; repealing provisions relating to bar to alimony and to effect of death on either party on the payment or receipt of alimony; and making an editorial change.

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

**Section 1.** Section 3701 of Title 23 of the Pennsylvania Consolidated Statutes is repealed:

[§ 3701. Alimony.

(a) General rule.--Where a divorce decree has been entered, the court may allow alimony, as it deems reasonable, to either party only if it finds that alimony is necessary.

(b) Factors relevant.--In determining whether alimony is necessary and in determining the nature, amount, duration and manner of payment of alimony, the court shall consider all relevant factors, including:

- (1) The relative earnings and earning capacities of the parties.
- (2) The ages and the physical, mental and emotional conditions of the parties.
- (3) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (4) The expectancies and inheritances of the parties.
- (5) The duration of the marriage.
- (6) The contribution by one party to the education, training or increased earning power of the other party.
- (7) The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child.
- (8) The standard of living of the parties established during the marriage.
- (9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.
- (10) The relative assets and liabilities of the parties.
- (11) The property brought to the marriage by either party.
- (12) The contribution of a spouse as homemaker.
- (13) The relative needs of the parties.
- (14) The marital misconduct of either of the parties during the marriage. The marital misconduct of either of the parties from the date of final separation shall not be considered by the court in its determinations relative to alimony, except that the court shall consider the abuse of one party by the other party. As used in this

paragraph, "abuse" shall have the meaning given to it under section 6102 (relating to definitions).

(15) The Federal, State and local tax ramifications of the alimony award.

(16) Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed under Chapter 35 (relating to property rights), to provide for the party's reasonable needs.

(17) Whether the party seeking alimony is incapable of self-support through appropriate employment.

(c) Duration.--The court in ordering alimony shall determine the duration of the order, which may be for a definite or an indefinite period of time which is reasonable under the circumstances.

(d) Statement of reasons.--In an order made under this section, the court shall set forth the reason for its denial or award of alimony and the amount thereof.

(e) Modification and termination.--An order entered pursuant to this section is subject to further order of the court upon changed circumstances of either party of a substantial and continuing nature whereupon the order may be modified, suspended, terminated or reinstated or a new order made. Any further order shall apply only to payments accruing subsequent to the petition for the requested relief. Remarriage of the party receiving alimony shall terminate the award of alimony.

(f) Status of agreement to pay alimony.--Whenever the court approves an agreement for the payment of alimony voluntarily entered into between the parties, the agreement shall constitute the order of the court and may be enforced as provided in section 3703 (relating to enforcement of arrearages).]

**Section 2.** Title 23 is amended by adding sections to read:

§ 3701.1. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Cohabitation." The act of two individuals residing together and mutually assuming those rights and duties usually attendant upon a marriage relationship. Cohabitation may be shown by evidence of financial, social and sexual interdependence, by a sharing of the same residence and by other means. This definition shall apply to all alimony awards and to all alimony agreements, unless otherwise provided in the agreement.

"Compensatory alimony." Includes payments for a spouse who contributed to the education or training, or both, of the other spouse, substantially increasing the earning capacity of the other spouse.

"Excess income." The amount by which a party's income or earning capacity exceeds the party's reasonable needs.

"Reasonable needs." The needs of a party consistent with a realistic lifestyle during the marriage in light of the parties' economic circumstances following the divorce.

"Reimbursement alimony." Includes payments for a spouse who contributed nonmarital assets to the marriage.

"Unfunded needs." The amount by which a party's reasonable needs exceed the party's income and earning capacity.

§ 3701.2. Alimony.

(a) General rule.--The court shall consider an award of alimony:

- (1) at the request of a party; and
- (2) upon a determination that:
  - (i) the petitioner has unfunded needs; and
  - (ii) the respondent has excess income.

(b) Factors for unfunded needs and excess income.--In determining the amount of a party's respective unfunded needs and excess income, the court shall consider the following factors:

- (1) The income and earning capacity of each party, including the income that is or could be reasonably derived from all the assets of each party.
- (2) The age and physical, mental and emotional condition of each party.
- (3) The benefits received by or available to each party, including, but not limited to, medical, retirement, insurance or other benefits.
- (4) The extent to which a party's earning capacity, expenses or financial obligations were or will be affected because the party served or will serve as the custodian of a minor child.
- (5) The standard of living of the parties established during marriage.
- (6) The relative education of the parties and the reasonable anticipated expenses to acquire sufficient education or training to enable the petitioner to enhance the petitioner's earning capacity.
- (7) The reasonable liabilities of each party, including debt service on those liabilities.
- (8) The obligations of each party for child support.
- (9) The Federal, State and local tax ramifications of the alimony award.
- (10) The extent to which income and assets have already been taken into account in determining an award of equitable distribution, child support, counsel fees or otherwise.

(c) Amount of alimony.--Upon a determination that an award of alimony is appropriate, the amount of the award shall be equal to the least of:

- (1) the amount of the petitioner's unfunded needs;
- (2) the amount of the respondent's excess income; or
- (3) an amount equal to the spousal support determined under the Pennsylvania Support Guidelines.

(d) Duration of alimony generally.--

- (1) The court in awarding alimony shall determine whether the award shall have a definite term or an indefinite term.
- (2) In the court's sole discretion, it may consider the option of awarding one year of alimony for every three years of marriage prior to final separation. This provision shall not be considered a guideline for all cases.

(e) Factors for duration of alimony.--In determining the duration of a definite or an indefinite award of alimony, the court shall consider all relevant factors, including the following:

- (1) The age and physical, mental and emotional condition of each party.
- (2) The benefits received by or available to each party, including, but not limited to, medical, retirement, insurance or other benefits.

(3) The contribution by one party to the education, training or increased earning capacity of the other party.

(4) The extent to which a party's earning capacity, expenses or financial obligations were or will be affected because the party served or will serve as the custodian of a minor child.

(5) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the petitioner to enhance the petitioner's earning capacity.

(6) The reasonable liabilities each party, including the duration of any debt service on those liabilities.

(7) The marital misconduct of either of the parties during the marriage and prior to the date of final separation, but the court shall consider the abuse of one party by the other party even after the date of final separation. As used in this paragraph, "abuse" shall have the meaning given to it under section 6102(a) (relating to definitions).

(8) The extent to which income and assets have already been taken into account in determining an award of equitable distribution, child support, counsel fees or otherwise.

(9) Where appropriate, the date when either of the parties might reasonably retire from employment.

(10) The amount and duration of spousal support or alimony pendente lite paid by the obligor, including payments unallocated between spouse and child, whether voluntary or pursuant to a court order.

(f) Indefinite term of alimony.--

(1) The court shall consider an indefinite term of alimony when the obligee:

(i) is the primary custodian or caretaker of and is providing care for an unemancipated child of the parties, if the child suffers from a serious physical or mental disability; and

(ii) lacks sufficient income or earning capacity and separate and marital property to pay reasonable living expenses, including the cost of medical treatment for the child.

(2) Paragraph (1) is not intended to preclude a court from making an award of alimony that has an indefinite term in the appropriate case under the factors enumerated in subsection (e).

(3) For an award of alimony that has an indefinite term, the court may modify or terminate the award upon a material change in circumstances of either party of a substantial and continuing nature.

(g) Compensatory and reimbursement alimony.--Regardless of whether an award of alimony has been made under the provisions of subsection (a), where the marital assets are insufficient to effect economic justice, a court may award either compensatory alimony or reimbursement alimony, or both.

(h) Statement of reasons.--In an award made under this section, the court shall set forth the reasons for its denial or award of alimony and the amount and duration thereof with specific reference to the relevant factors and circumstances under subsections (b) and (e).

(i) Modification.--

(1) Except as provided under paragraph (2), an award entered pursuant to this section is subject to further order of the court upon a material change in circumstances of either party of a substantial and continuing nature whereupon the award may be modified, suspended or reinstated or a new award made. Unless the court orders otherwise, any further award shall apply to payments accruing effective on the date of filing of the petition for the requested relief. An award that has an indefinite term may be modified to set a definite term.

(2) The court may not grant a petition to modify the duration of an alimony award that has a definite term.

(j) Termination.--

(1) Except as provided under paragraph (2) and unless otherwise indicated in an agreement between the parties, an award of alimony shall terminate when any of the following has occurred:

(i) The obligee has remarried.

(ii) The obligee has entered into cohabitation.

(iii) The death of the obligee.

(iv) The death of the obligor, unless otherwise indicated in the prior order of court.

(2) An award of compensatory alimony or reimbursement alimony under subsection (g) does not terminate upon the remarriage or cohabitation of the obligee but may terminate upon the death of either party.

(3) Except as provided under paragraph (2), if an obligor has paid alimony to an obligee after an alimony termination event under paragraph (1), the court may order the obligee to reimburse the obligor the amount of the alimony paid after the alimony termination event.

(k) Status of agreement to pay alimony.--Whenever the parties enter a written agreement for the payment of alimony, the agreement shall constitute an order of the court for enforcement purposes only. Absent a specific provision to the contrary, an agreement for the payment of alimony is not subject to modification.

**Section 3.** Section 3703 of Title 23 is amended to read:

§ 3703. Enforcement of arrearages.

If at any time a party is in arrears in the payment of alimony or alimony pendente lite as provided for in sections [3701] 3701.2 (relating to alimony) and 3702 (relating to alimony pendente lite, counsel fees and expenses), the court may, after hearing, in order to effect payment of the arrearages:

(1) Enter judgment.

(2) Authorize the taking and seizure of the goods and chattels and the collection of the rents and profits of the real estate of the party.

(3) Attach no more than 50% of the wages of the party.

(4) Award interest on unpaid installments.

(5) Require security to insure future payments.

(6) Issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court

order be brought before the court at such time as the court may direct. If the court finds, after hearing, that the named person willfully failed to comply with the court order, it may declare the person in civil contempt of court and in its discretion make an appropriate order, including, but not limited to, commitment of the person to prison for a period not to exceed six months.

(7) Award counsel fees and costs.

**Section 4.** Sections 3706 and 3707 of Title 23 are repealed:

[§ 3706. Bar to alimony.

No petitioner is entitled to receive an award of alimony where the petitioner, subsequent to the divorce pursuant to which alimony is being sought, has entered into cohabitation with a person of the opposite sex who is not a member of the family of the petitioner within the degrees of consanguinity.

§ 3707. Effect of death of either party.

Upon the death of the payee party, the right to receive alimony pursuant to this chapter shall cease. Upon the death of the payor party, the obligation to pay alimony shall cease unless otherwise indicated in an agreement between the parties or an order of court.]

**Section 5.** This act shall apply as follows:

(1) Subject to paragraphs (2) and (3), the amendment, addition or repeal of 23 Pa.C.S. §§ 3701, 3701.1, 3701.2, 3703, 3706 and 3707 shall apply to:

(i) Any petition for alimony filed on or after the effective date of this act.

(ii) Any petition for modification or termination of an alimony award filed on or after the effective date of this act.

(iii) Any case pending on the effective date of this act.

(2) The definition of “cohabitation” in 23 Pa.C.S. § 3701.1 shall apply to awards of alimony entered into on or after the effective date of this act.

(3) Former 23 Pa.C.S. § 3706 shall apply to awards of alimony entered into before the effective date of this act.

**Section 6.** This act shall take effect in 60 days.

## **APPENDIX 5: RESOLUTION**

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1993 Senate Resolution No. 43 (Printer's No. 1673)



THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE RESOLUTION**

**No. 43**

Session of  
1993

INTRODUCED BY LEWIS, GREENLEAF, AFFLERBACH, O'PAKE, SHUMAKER,  
REIBMAN, STAPLETON, FATTAH, MUSTO, LAVALLE, PUNT, PECORA,  
SALVATORE, LEMMOND AND HART, APRIL 19, 1993

AS RE-REPORTED FROM COMMITTEE ON RULES, HOUSE OF  
REPRESENTATIVES, AS AMENDED, OCTOBER 6, 1993

A CONCURRENT RESOLUTION

1 Directing the Joint State Government Commission to study on an  
2 ongoing basis legislative proposals involving CERTAIN AREAS ←  
3 OF domestic relations law and creating a task force.

4 WHEREAS, Numerous legislative proposals are from time to time  
5 before the General Assembly which would amend Title 23 (Domestic  
6 Relations) of the Pennsylvania Consolidated Statutes; and

7 WHEREAS, Many other issues, not in legislative form, relating  
8 to CERTAIN AREAS OF domestic relations law have come to the ←  
9 attention of the General Assembly; and

10 WHEREAS, These proposals and issues raise significant  
11 substantive and technical concerns regarding THESE CERTAIN AREAS ←  
12 OF domestic relations law; and

13 WHEREAS, Since Pennsylvania's domestic relations laws  
14 recently have been consolidated in Title 23 (Domestic Relations)  
15 of the Pennsylvania Consolidated Statutes as the Domestic  
16 Relations Code, there is a need for a more coordinated review of  
17 ~~any~~ CERTAIN proposed amendments in order to maintain the ←

1 systemic integrity of the Domestic Relations Code; and

2 WHEREAS, The various issues before the General Assembly  
3 require a bicameral and bipartisan review and response;  
4 therefore be it

5 RESOLVED (the House of Representatives concurring), That the  
6 General Assembly direct the Joint State Government Commission to  
7 undertake an ongoing ~~study of the various issues~~ LIMITED STUDY ←  
8 OF CERTAIN AREAS relating to domestic relations law, EXCEPT THAT ←  
9 THE JOINT STATE GOVERNMENT COMMISSION SHALL NOT HAVE POWER UNDER  
10 THIS RESOLUTION TO INVESTIGATE OR STUDY AREAS OF DOMESTIC  
11 RELATIONS LAW RELATING TO CHILD ABUSE AND ADOPTION; and be it  
12 further

13 RESOLVED, That to accomplish this goal, a task force be  
14 created comprised of the majority chairman of the Judiciary  
15 Committee of the Senate and the majority chairman of the  
16 Judiciary Committee of the House of Representatives, who shall  
17 alternate chairmanship of the task force, the minority chairman  
18 of the Judiciary Committee of the Senate, the majority and  
19 minority chairmen of the Aging and Youth Committee of the  
20 Senate, the minority chairman of the Judiciary Committee of the  
21 House of Representatives and the majority and minority chairmen  
22 of the Aging and Youth Committee of the House of  
23 Representatives; and be it further

24 RESOLVED, That an advisory committee be created to assist the  
25 task force composed of individuals deemed appropriate by the  
26 task force; and be it further

27 RESOLVED, That the task force shall, from time to time,  
28 present its findings and recommended legislation to the General  
29 Assembly.