

Appendix F-3: PA Custody Statute

PENNSYLVANIA CUSTODY ACT
23 P.C.S.A. §§ 5301-5314

Section

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§ 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

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.