

# **A User-Friendly Guide to... Pennsylvania's New Child Custody Law**

**February 24, 2011**

This guide is designed to provide accurate and authoritative information on child custody law. Nothing in this publication is to be construed as the rendering of legal advice. Readers are responsible for obtaining such advice from their own legal counsel. This publication is intended for educational and informational purposes only.

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## SAFETY AS A PRIORITY IN CHILD CUSTODY CASES

### ❖ DOMESTIC VIOLENCE IS PREVALENT IN CUSTODY DISPUTES

In the 20% of cases where parents need court intervention to decide custody for them, domestic violence is prevalent; families in these contested custody cases present the court with issues of domestic violence up to 75% of the time. Janet Johnston et al., *Allegations and Substantiations of Abuse in Custody-Disputing Families*, 43 FAM. CT. REV. 284 (2005).

### ❖ ABUSIVE PARTNERS ABUSE CHILDREN

According to the American Psychological Association, “40%-60% of men who abuse women also abuse children.” When one form of abuse of a family member is present it is important to look for and prevent abuse of other family members. AM. PSYCH. ASS’N, *VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY* 80 (1996).

### ❖ AFTER SEPARATION, CHILDREN ARE AT RISK

Post-separation risks to children include:

- ♦ Exposure to threats or acts of violence towards the mother
- ♦ Undermining mother-child relationships
- ♦ Physical or sexual abuse of the child by the batterer
- ♦ Children [emulate] the batterer as a role model
- ♦ Rigid, authoritarian parenting; neglectful or irresponsible parenting
- ♦ Psychological abuse and manipulation
- ♦ Abduction
- ♦ Exposure to violence in the batterer’s new relationship

NAT’L COUNCIL OF JUVENILE & FAMILY CT. JUDGES, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *CHILDREN’S EXPOSURE TO DOMESTIC VIOLENCE: GUIDE TO RESEARCH AND RESOURCES* 59 (2006).

The abuser may attack the other parent when he/she visits the children, continue to make threats or verbally and/or emotionally abuse the children even when the abuser’s contact with the children is in a supervised facility. AM. PSYCH. ASS’N, *VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY* 40-41 (1996).

The abuser may threaten to harm or kidnap the children in an effort to regain control over the other parent. This behavior may be directed at restoring the relationship, or it may be aimed at generating fear and distress. Although threats to abduct are not always carried out, the effect is to cause fear and anxiety in both the threatened parent and the child. AM. PSYCH. ASS'N, VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 40-41 (1996).

#### ❖ **CHILDREN REACT TO DOMESTIC VIOLENCE**

Abuse committed directly against a child, or violence committed in the child's presence, can make a child more vulnerable to a variety of adverse consequences. Changes may occur in behavior, school performance, eating and sleeping habits, physical symptoms and/or friendships. Signs can include:

- ♦ Drug and alcohol use
- ♦ "Perfect" behavior while in the presence of the abuser
- ♦ Acting like the parent or attempting to protect other family members
- ♦ Anger toward one or both parents
- ♦ Abusive behavior toward one parent, usually the at-risk parent

See NAT'L COUNCIL OF JUVENILE & FAMILY CT. JUDGES, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES, BENCHCARD 1 (2008).

#### ❖ **COURTS CAN MINIMIZE THE HARM TO CHILDREN**

Emotional abuse can be as damaging as physical abuse in destroying the child's self-confidence and self-esteem. Being in the presence of offensive and abusive behavior is not in the best interest of the child. Research shows that children who have been subjected or exposed to violence in their homes have a better chance of minimizing the harm sustained to them if all systems intervene, maximizing their exposure to supportive roles with caring adults, especially the non-violent parent, and minimizing the exposure to the violence and its accompanying behaviors. NAT'L COUNCIL OF JUVENILE & FAMILY CT. JUDGES, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES, BENCHCARD 1 (2008).

## Pennsylvania Custody Law Comparison Chart

	Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Effective Date		<p>“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.” H.B. 1639, Section 4. “This act shall take effect in 60 days.” H.B. 1639, Section 5.</p>	<p>Act 112 was signed on November 17, 2010. The law became effective 60 days later, on January 22, 2011. <i>The former custody law will govern any action commenced before January 22, 2011.</i> H.B. 1639, Section 4. Act 112 is codified at 23 Pa.C.S. § 5322-40.</p>
Declaration of Policy	<p>“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 with grandparents when a parent is deceased, divorced or separated.” § 5301.</p>	<p>Repealed and not replaced.</p>	<p>The Declaration of Policy was removed from the bill in its second iteration (PN 3705). For guidance in interpreting the statute, look to the body of the text.</p>

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<b>Definitions</b>	Abuse	<p><b>Abuse to be considered:</b> Present and past violent or abusive conduct which may include, but is not limited to, abusive conduct as defined in the PFA Act. § 5303(a)(3).</p>	<p><b>Abuse to be considered:</b> Abuse is to be considered “[a]s defined in section 6102 (relating to definitions).” § 5322</p>	<p>The former custody law allowed the court to consider forms of abuse not covered by PFA Act. The new law limits abuse to the PFA Act’s definition of abuse.</p>
<b>Definitions</b>	Other Definitions	<p><b>Types of Custody</b>  <i>Legal Custody:</i> “right to make major decisions affecting the best interests of the minor child.”  <i>Partial Custody:</i> “right to take possession of a child away from the custodial parent...”  <i>Physical Custody:</i> “actual physical possession / control over child”  <i>Shared Custody:</i> “order awarding shared legal / physical or both ...”  <i>Visitation:</i> “right to visit a child. The term does not include the right to remove a child from the custodial parent’s control.” § 5302.</p>	<p><b>Types of Custody:</b>  <i>Legal Custody:</i> “right to make major decisions on behalf of the child.”  <i>Shared Legal Custody:</i> “right of more than one individual to legal custody of the child.”  <i>Sole Legal Custody:</i> “right of one individual to exclusive legal custody of the child.”  <i>Physical Custody:</i> “physical possession &amp; control of the child.”  <i>Partial Physical Custody:</i> “right to assume physical custody of the child for less than majority of time.”  <i>Primary Physical Custody:</i> “right to assume physical custody of the child for a majority of the time.”  <i>Shared Physical Custody:</i> “right of more than one individual to assume physical custody of the child, each having significant periods of physical custody with the child.”                      § 5322(A).  <b>(cont.)</b></p>	<p><b>Types of Custody</b>                      Like the former custody law, the new custody law defines the various types of custody.                      The new law delineates between physical and legal custody and no longer defines the term “visitation.”                      The concept of visitation is now encompassed in the term “supervised physical custody.”                      Children and youth service agencies are not considered an “agency” for the purpose of monitoring parent/child interaction during periods of supervised physical custody (see definition for agency).  <b>Other Definitions:</b>  <i>Agency:</i> The new law adds the definition of agency, which <i>excludes</i> children and youth service agencies.  <b>(cont.)</b></p>

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Definitions (cont.)	Other Definitions (cont.)		<p><b><u>Types of Custody: (cont.)</u></b>  <i>Sole Physical Custody:</i> “right of one individual to exclusive physical custody of the child.”  <i>Supervised Physical Custody:</i> “[c]ustodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors ...interaction.”</p> <p><b><u>Other Definitions:</u></b>  <i>Agency:</i> “Any organization, society, institution, court facility or other entity which provides for the care of a child. <i>The term does not include a county children and youth services agency.</i>” (emphasis added)  <i>Parental Duties:</i> “Includes meeting the physical, emotional and social needs of the child.”  <i>Relocation:</i> “[C]hange in residence of the child which significantly impairs the ability of a nonrelocating party to exercise custodial rights.”            § 5322(A).</p>	<p><i>Relocation:</i>            The new custody law now provides for a definition of relocation. (See chart below – Relocation).  <i>Parental Duties:</i>            ‘Parental duties’ is also a new definition in the custody law.            For application of the definition, see chart below – Factor (3).</p>

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Awards of Custody	Types of Awards / Reasons for Awards	<p>There is no specific section outlining types of custody in the former law. Partial, physical or shared custody or visitation is available in any combination that the court believes will serve the best interests of the child. § 5302-5304.</p>	<p><b>Types of Awards:</b></p> <ul style="list-style-type: none"> <li>• Shared physical custody</li> <li>• Primary physical custody</li> <li>• Partial physical custody</li> <li>• Sole physical custody</li> <li>• Supervised physical custody</li> <li>• Shared legal custody</li> <li>• Sole legal custody.</li> </ul> <p>§ 5323(a). <b>Interim Award:</b> “The court may issue an interim award of custody to a party who has standing...” § 5323(b). <b>Reasons for Award:</b> “The court shall delineate the reasons for its decision on the record in open court or in a written opinion or order.” § 5323(d). <b>Safety Conditions:</b> “[I]f 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.” § 5323(e). <b>(cont.)</b></p>	<p><b>Types of Awards:</b> The new law delineates the possible combinations of custody awards. The new law also codifies the court’s ability to issue an interim custody award pursuant to Rule 1915.13 (special relief). <b>Court Order / Reasons for Awards:</b> The new law requires the court to state the factors it considered when entering a final order either in open court, in the order, or in a written opinion. This was not a requirement in the former custody law. <b>Safety Conditions:</b> The new law requires the court to include safety provisions to protect the child and the abused party if there is an ongoing risk of harm to either the child or the abused party. (See chart below - Abuse As a Factor). <b>(cont.)</b></p>

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
(cont.)	(cont.)		<p><b>Enforcement:</b> 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.</p> <p>§ 5323(f).</p>	<p><b>Enforcement:</b> The new law requires the court to draft an order with sufficient detail to allow law enforcement to enforce the order.</p>
Standing		<p>There is no specific section providing standing for parents or <i>in loco parentis</i>.</p> <p><b>Grandparent Standing:</b> When a parent is deceased, the child’s grandparent or great-grandparents may seek “reasonable partial custody or visitation or both.” The court may grant such partial custody or visitation if it is in BIOC and will not interfere with the parent-child relationship. Court is to consider time spent with the grand or great-grand parents. § 5311. If the child’s parents are <i>divorced</i>, grandparents or great-grandparents may seek partial custody or visitation. Same considerations as when parent deceased. § 5312 (emphasis added). <b>(cont.)</b></p>	<p>Specifically defines who has standing. Includes a parent, a person <i>in loco parentis</i> to the child, or a grandparent who is not <i>in loco parentis</i> (if the additional requirements explained below are met). § 5325(1)-(3).</p> <p><b>Grandparent Standing: Physical/Legal Custody:</b> Grandparents who are not <i>in loco parentis</i> have standing to file for <i>any form of physical/legal custody if</i>: (i) the relationship began with the consent of a parent or under a court order, (ii) the grandparent assumes or is willing to assume responsibility for the child, <i>and (iii) one of the following conditions is met</i>: 1) the child is dependent under 42 Pa.C.S. Ch. 63 (juvenile matters); 2) “the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity”; or 3) the child resided with the grandparent for at least 12 months and is removed from home by parents (if grandparent files for custody within six months of removal). § 5324(3) (emphasis added). <b>(cont.)</b></p>	<p>The new law specifically defines who has standing, including <i>in loco parentis</i>, thus incorporating <i>in loco parentis</i> doctrine from case law. The new law does not define <i>in loco parentis</i>. Case law will still govern this type of standing.</p> <p><b>Grandparent Standing: Physical/Legal Custody:</b> The new law returns grandparent standing for any form of physical or legal custody to the pre-<i>Baxter</i> interpretation. <i>R.M. v. Baxter</i>, 777 A.2d 446 (Pa. 2001). A grandparent must meet all three criteria to have standing to petition for legal or physical custody. <b>(cont.)</b></p>

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	Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Standing</b>	<p>If the child has <i>resided</i> with the grandparents for 12 months or more and is removed by the parents, grandparents may seek reasonable partial custody or visitation. Court shall grant if BIOC and will not interfere with parent child relationship. § 5313(a) (emphasis added).</p> <p>The Pa. Sup. Ct. held that grandparents have automatic standing based on the grammatical construction of the statute. Grandparent may seek physical and legal custody; automatic standing derived from the <i>Baxter</i> case. R.M. v. Baxter, 777 A.2d 446 (Pa. 2001).</p>	<p><b><u>Grandparent Standing:</u></b> <b><u>Partial/Supervised Physical Custody:</u></b> Grandparents have standing to seek <i>partial physical custody or supervised physical custody if</i></p> <p>(1) a parent (grandparent’s child) is deceased, (2) parents are separated at least six months, or (3) child resided with grandparent for 12 months (if action filed within 6 mo. of removal). § 5325 (emphasis added).</p>	<p><b><u>Grandparent Standing:</u></b> <b><u>Partial/Supervised Physical Custody:</u></b> Like the former law, the new law gives grandparents standing for partial / supervised physical custody where a parent is deceased or the child resided with the grandparents for 12 months (if filed within 6 mo. of living with grandparent).</p> <p>The new law adds, “where the parents ... are separated for at least six months,” replacing the former law’s standing for grandparents where parents are divorced.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Factors</b>	Safety – Weighted	<p>“[T]he 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 [in the PFA Act].” § 5303(a)(3). This is one of three main articulated factors.</p>	<p>In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, <i>giving weighted consideration to those factors which affect the safety of the child</i>, including the following . . .” § 5328(a) (emphasis added).  16 factors are enumerated, including a range of considerations.  Factors (2), (8), &amp; (13) all specifically refer to abuse or domestic violence.</p>	<p>The new custody law requires the court to give “<i>weighted consideration</i>” to factors affecting the safety of the child. The former custody law focused the court’s attention on abuse as one of three primary considerations  Discussion of each factor and its relevance to safety follows.</p>
<b>Factors</b>	(1) – Continuing Contact	<p>“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 non-custodial parent and the child.” § 5303(a)(2). This is one of three main articulated factors.</p>	<p>“(1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.” § 5328(a)(1).</p>	<p>Factor (1) in the new custody law uses language from the former custody law. Essentially, factor (1) reiterates one of the three main articulated factors from the former best interests analysis. In the new law, factor (1) is one of 16 factors in the new law, as opposed to one of three factors in the former law.</p>

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Factors</b>	(2) - Abuse	<p>“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 in the PFA Act.” § 5303(a)(3).</p> <p>This is one of three main articulated factors.</p> <p>*Case law expanded relevant factors to include a range of considerations beyond those specifically articulated in the statute.</p>	<p>“(2) The present and past abuse committed by a party or member of the party’s household, whether there is a continued <i>risk of harm to the child or an abused party</i> and which party can better provide adequate safeguards and supervision of the child.” § 5328(a)(2) (emphasis added).</p> <p><i>Abuse Defined:</i> “As defined in section 6102 [of the PFA Act] (relating to definitions).” § 5322.</p>	<p><b><u>Scope of Consideration:</u></b> Factor (2) of the new law specifically requires the court to consider the risk of harm to both the child and the abused parent.</p> <p><b><u>Consideration of Abuse:</u></b> The new law requires courts to consider present and past abuse by a party or by a household member. This is the same as the old law. The new law goes on to direct the court to determine whether that abuse presents a continued risk of harm to either the child or the abused party. If so, the court must decide which party would adequately protect and safeguard the child from further abuse.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Factors</b>	(3) - Parenting	<p>“In making an order for custody or partial custody, the court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p> <p>§ 5303(a)(1).</p> <p>*Case law expanded relevant factors to include a range of considerations beyond those specifically articulated in the statute.</p>	<p>“(3) The parental duties performed by each party on behalf of the child.”</p> <p>§ 5328(a)(3).</p> <p><i>Parental Duties Defined:</i> “Includes meeting the physical, emotional and social needs of the child.”</p> <p>§ 5322.</p>	<p>Factor (3) requires the court to explore which party has historically met the physical, emotional, and social needs of the child as a way to predict their future behavior.</p> <p>This was not an explicit factor in the old law, but courts did make predictions about future ability to parent based on past behavior under the catchall language of the former law, which allowed the courts to consider “any factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p>
<b>Factors</b>	(4)– Stability/Continuity	<p>“In making an order for custody or partial custody, the court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p> <p>§ 5303(a)(1).</p> <p>*Case law expanded relevant factors to include a range of considerations beyond those specifically articulated in the statute.</p>	<p>“(4) The need for stability and continuity in the child’s education, family life and community life.”</p> <p>§ 5328(a)(4).</p>	<p>Factor (4) is also a predictive factor, and requires the court to decide which party will, in the future, provide for stability and continuity in the child’s life.</p> <p>This was not an explicit factor in the old law, but courts made historically based predictions of future conduct under the catchall language of the former law.</p>

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<b>Factors</b>	(5) & (6) –Family	<p>“[T]he court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing. § 5303(a)(1). Case Law: It is policy that siblings, including half-siblings, are to be raised together absent compelling reasons. See <i>Saintz v. Rinker</i>, 902 A.2d 509, 513 (Pa. Super. Ct. 2006).</p>	<p>“(5) The availability of extended family.” § 5328(a)(5). “(6) The child’s sibling relationships.” § 5328(a)(6).</p>	<p>Factors (5) &amp; (6) were not explicit factors in the former law. But under the former law, courts considered the availability of family &amp; sibling relationships under the catchall language of the former law as well as broad public policy considerations. (<i>Saintz</i>, 902 A.2d at 513).</p>
<b>Factors</b>	(7) – Child Preference	<p>The court shall consider child preference § 5303(a)(1). “Even if the households are not equivalently suitable for rearing the child, the child’s preference is a factor that must be carefully considered..., keeping in mind the child’s maturity &amp; intelligence, as well as the reasons for child’s preference. We are mindful that the child’s preference is not controlling &amp; that the trial judge is in the best position to determine the weight to be given the child’s preference.” <i>Johns v. Cioci</i>, 865 A.2d 931 (Pa. Super. Ct. 1993).</p>	<p>“(7) The well-reasoned preference of the child, based on the child’s maturity and judgment.” § 5328(a)(7).</p>	<p>Both the former and the new custody law include consideration of the child’s preference. Factor (7) makes the added requirement that child preferences be considered only when “well-reasoned.” Previously, appellate courts held that a child’s preference was considered in the context of their maturity and intelligence and weighted accordingly.</p>

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<b>Factors</b>	(8) – Continuing Contact	<p>“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 non-custodial parent and the child.”</p> <p>§ 5303(a)(1).</p> <p>This is one of three main articulated factors.</p>	<p>“(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.”</p> <p>§ 5328(a)(8).</p>	<p>Factor (8) <i>explicitly</i> prevents the court from considering attempts to turn a child against another parent where safety measures are necessary to care for the child.</p> <p>The former law considered attempts to turn a child against another parent as part of their determination of which parent was more likely to encourage frequent and continuing contact.</p>
<b>Factors</b>	(9) Relationship w/ Parent	<p>“In making an order for custody or partial custody, the court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p> <p>§ 5303(a)(1).</p> <p>*Case law expanded relevant factors to include a range of considerations beyond those specifically articulated in the statute.</p>	<p>“(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.”</p> <p>§ 5328(a)(9).</p>	<p>Factor (9) was not an explicit factor in the former law, but courts have considered stability / consistency under the catchall language of the former law, which allowed the courts to consider “any factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p>

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<b>Factors</b>	(10) – Daily Needs	<p>“In making an order for custody or partial custody, the court shall consider ... any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.” § 5303(a)(1). *Case law expanded relevant factors to include a range of considerations beyond those specifically articulated in the statute.</p>	<p>“(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.” § 5328(a)(10).</p>	<p>Factor (10) was not an explicit factor in the former law, but courts have considered the factor in the past under the catchall language of the former law, which allowed the courts to consider “any factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p>
<b>Factors</b>	(11) - Proximity	<p>“In making an order for custody or partial custody, the court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.” § 5303(a)(1). *Case law expanded relevant factors to include a range of considerations beyond those specifically articulated in the statute.</p>	<p>“(11) The proximity of the residences of the parties.” § 5328(a)(11).</p>	<p>Factor (11) was not an explicit factor in the former law. In the past, courts considered the factor under the catchall language of the former law, which allowed the courts to consider “any factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p>

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		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Factors</b>	(12) – Availability of Care	<p>“In making an order for custody or partial custody, the court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p> <p>§ 5303(a)(1).</p> <p>*Case law expanded relevant factors to include a range of considerations beyond those specifically articulated in the statute.</p>	<p>“(12) Each party’s availability to care for the child or ability to make appropriate child-care arrangements.”</p> <p>§ 5328(a)(12).</p>	<p>Factor (12) was not an explicit factor in the former law. In the past, courts considered the factor under the catchall language of the former law, which allowed the courts to consider “any factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p>
<b>Factors</b>	(13) – Continuing Contact	<p>“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.”</p> <p>§ 5303(a)(1).</p> <p>This is one of three main articulated factors.</p>	<p>“(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.”</p> <p>§ 5328(a)(13).</p>	<p>Factor (13) directly acknowledges that courts <i>may not consider lack of cooperation against a party when the alleged lack of cooperation is a result of efforts to protect the child from abuse.</i> The former law considered which parent was more likely to encourage frequent and continuing contact, but did not specifically identify conflict as part of that consideration.</p>

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Factors</b>	(14) – Drug/Alcohol Use	<p>“In making an order for custody or partial custody, the court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p> <p>§ 5303(a)(1).</p> <p>*Case law expanded relevant factors to include a range of considerations beyond those articulated in the statute.</p>	<p>“(14) The history of drug or alcohol abuse of a party or member of a party’s household.”</p> <p>§ 5328(a)(14).</p>	<p>Factor (14) was not an explicit factor in the former law. In the past, courts considered the factor under the catchall language of the former law, which allowed the courts to consider “any factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p>
<b>Factors</b>	(15) – Mental / Physical Health	<p>“In making an order for custody or partial custody, the court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p> <p>§ 5303(a)(1).</p> <p>*Case law expanded relevant factors to include a range of considerations beyond the three articulated in the statute.</p>	<p>“(15) The mental and physical condition of a party or member of a party’s household.”</p> <p>§ 5328(a)(15).</p>	<p>Factor (15) was not an explicit factor in the old law. In the past, courts considered the factor under the catchall language of the former law, which allowed the courts to consider “any factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p>

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Factors</b>	(16) – Catchall	<p>“In making an order for custody or partial custody, the court shall consider child preference, as well as any other factor which legitimately impacts child’s physical, intellectual and emotional wellbeing.”</p> <p>§ 5303(a)(1).</p> <p>*Case law expanded relevant factors to include a range of considerations beyond the three articulated in the statute.</p>	<p>“(16) Any other relevant factor.”</p> <p>§ 5328(a)(16).</p>	<p>Factor (16) provides the same catchall consideration as provided in the former law.</p>
<b>Gender Neutrality</b>		<p>No provision included in statute.</p>	<p>“(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.”</p> <p>§ 5328(b).</p>	<p>The new law includes a new gender neutrality provision. This is a codification of constitutional case law prohibiting gender bias and discrimination.</p>

## Pennsylvania Custody Law Comparison Chart

	Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Presumptions	No provision included in statute.	<p><b><u>Between Parents:</u></b>                      “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.”                      § 5327(a).</p> <p><b><u>Between Parents &amp; Third Party:</u></b>                      “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.”                      § 5327(b).</p>	<p>The new law’s presumption for the parents over any third party (including grandparents) was not in the former custody statute. The presumption in favor of parents over grandparents is consistent with <i>Troxel v. Granville</i>, 530 U.S. 914 (2000), the United States Supreme Court case that prevented courts from interfering with a fit parent’s fundamental right to make decisions regarding their children, and a codification of Pennsylvania appellate jurisprudence. See <i>Jordan v. Jackson</i>, 876 A.2d 443 (Pa. Super. Ct. 2005).</p> <p>See below – Factors for Grandparents</p> <p>See above – Standing</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Factors	Grandparents	<p><b><u>Grandparent Partial Custody / Visitation:</u></b> When a parent is deceased or parents are divorced, ... the court may grant such partial custody or visitation if it is in BIOC and will not interfere with the parent-child relationship. Court is to consider time spent with the grand or great-grand parents. §§ 5311, 5312. If the child has resided with the grandparents for 12 months or more and is removed by the parents, grandparents may seek reasonable partial custody or visitation. Court shall grant if it is in the BIOC and will not interfere with parent child relationship. § 5313(a). <b>(cont.)</b></p>	<p><b><u>Grandparent Partial Custody / Visitation:</u></b> Step 1 – Standing (see chart above) Step 2 – 16 Factor BIOC Analysis (see above) Step 3 – Additional Factors: Grandparents and great-grandparents “(1) In ordering partial physical custody or supervised physical custody [where a parent(s) is deceased or separated/divorced] 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 [when the child resided with the grandparent for 12 or more months] the court shall consider whether the award: (i) interferes with parent/child relationship; and (ii) is in the best interest of the child.” § 5328(c). <b>(cont.)</b></p>	<p><b><u>Grandparent Partial Custody / Visitation:</u></b> The new law requires the court to consider the same factors as the former law (BIOC &amp; no interference with parent/child relationship, and time spent with the grandparent), but adds that these factors are also considered when the child’s parents have been separated for 6 months or more. When awarding partial custody or visitation to a grandparent where the child lived with the grandparent for 12 months, the considerations in the former law mirror the considerations in the new law (BIOC &amp; no interference with parent/child relationship). The new law requires the grandparent to file for custody within 6 months of the child leaving their residence. <b>(cont.)</b></p>

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Factors (cont.)	Grandparents (cont.)	<p><b><u>Grandparent Physical / Legal Custody:</u></b>                      If it is in the BIOC not to be in custody of either parent &amp; it is in the BIOC to be in custody of the grandparent, the court may award physical and legal custody to the grandparent. This applies to a grandparent: (1) who has genuine care / concern for child; (2) relationship began w/ parent’s consent; (3) assumed parental role / responsibilities (12 mo).                      § 5313.</p>	<p><b><u>Grandparent Physical / Legal Custody:</u></b>                      Step 1 – Standing (see chart above)                      Step 2 – 16 Factor BIOC Analysis (see above)                      * Must overcome presumption for Parent.</p>	<p><b><u>Grandparent Physical / Legal Custody:</u></b>                      Provided a grandparent has standing &amp; can overcome parental presumption, the new law requires the court to review based on the (16) best interest factors. <i>To have standing, the grandparent is required to meet the factors from the former law ((1) relationship began w/ consent of parents, (2) grandparent has genuine care/concern, and (3) either child is dependent (42 Pa.C.S. Ch 63), there is a substantial risk of harm to the child, or the child resided w/ grandparent for 12 mo).</i></p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Criminal CONVICTIONS</b>	<u>Initial Evaluation &amp; Counseling</u> Consideration of Criminal Convictions: <i>Initial Evaluation &amp; Counseling</i>	<p>“If a parent has been convicted of or has pleaded guilty or no contest to an offense set forth below, the court shall consider such criminal conduct and shall determine that such parent does not pose a threat of harm to the child before making an order of custody, partial custody, or visitation to that parent. ... In making a determination, partial custody or visitation ... the court shall appoint a qualified professional to provide counseling to an offending parent and shall take testimony from that professional... Counseling ... 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.”</p> <p>§ 5303(b). <b>(cont.)</b></p>	<p>“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 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.”</p> <p>§ 5329(a). <b>(cont.)</b></p>	<p><b><u>Evaluation:</u></b> Like the former law, the new law requires the court to provide for an evaluation of any custody petitioner convicted of certain crimes (see chart below – enumerated convictions) prior to awarding any form of custody to ensure that the offending party does not pose a threat to the child. Unlike the former law, the new law does not specify evaluator qualifications and does not provide for how the evaluator’s recommendations will be provided to the court. The former law required the court to take testimony from the evaluator and the rules prohibited any reports from being considered unless properly admitted into evidence.</p> <p><b>(cont.)</b></p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Criminal CONVICTIONS (cont.)</b>	Consideration of Criminal Convictions: Initial Evaluation & Counseling (cont.)	<p>See <i>Ramer v. Ramer</i>, 914 A.2d 894 (Pa. Super. Ct. 2006) (Court has an affirmative duty to determine parent does not pose a threat of harm).</p> <p>Pa. R. Civ. P. 1915.8 – The court may order the child(ren) / party to submit to &amp; fully participate in an evaluation by an appropriate expert. ... No reports shall be ...considered unless &amp; until admitted by the court. Evaluator subject to cross-examination.</p>	<p>“The court shall provide for an evaluation to determine whether:</p> <p>(1) the party or household member who committed an offense ... poses a threat to the child and</p> <p>(2) counseling is necessary for that party or household member.”</p> <p>§ 5329(c) (emphasis added).</p> <p>“(1) Where the court determines . . . 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.</p> <p>(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 on the victim.”</p> <p>§ 5329(d).</p>	<p><b>Counseling:</b> Unlike the former law, which <i>required</i> convicted offenders to undergo counseling, the new law provides that counseling is discretionary with the court, after an evaluation is made. Also, the new law no longer requires counseling prior to any award of custody. After an evaluation, an offender <i>may</i> be granted access to a child before receiving any relevant counseling.</p> <p>Like the former law, the new law requires the court to appoint a “qualified professional specializing in treatment relating to the particular offense.” But unlike the former law, the new law provides discretion for what the counseling will address, including, but not limited to, physical and sexual abuse, domestic violence, the psychology of the offender, and its effect on the victim.</p> <p><b>Household Members:</b> The new law adds household members as persons whose criminal conviction history must be considered.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b><u>Criminal CONVICTIONS</u></b>	Subsequent Counseling	No provision in custody statute.	<p>“(1) At any time . . . the court may require another evaluation to determine whether further counseling is necessary.</p> <p>(2) If the court awards custody to a party who committed an offense . . . or who shares a household with an individual who committed an offense . . . the court may require subsequent evaluations on the rehabilitation of the offending individual and the well-being of the child subsequent to the order.”</p> <p>§ 5329(e).</p>	The new law gives the court specific authority to require subsequent evaluations or ongoing counseling.
<b><u>Criminal CONVICTIONS</u></b>	Costs	No provision in custody statute. “A party who is without financial resources to pay the costs of litigation is entitled to proceed in forma pauperis.” Pa. R. Civ. P. 240.	<p>“The court may order a party to pay all or part of the costs of the counseling and evaluations.”</p> <p>§ 5329(f).</p>	The new law allows the court to place the cost of counseling & evaluation on the parties. However, Rule 240 of the Pennsylvania Rules of Civil Procedure (In Forma Pauperis) is still valid and may waive the costs associated with civil litigation for indigent litigants. Pa. R. Civ. P. 240; Cramer v. Zgela, 969 A.2d 621 (Pa. Super. Ct. 2009).

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Criminal CONVICTIONS</b>	Enumerated Offenses	18 Pa.C.S. Ch. 25 (criminal homicide). 18 Pa.C.S. § 2910 (kidnapping). 18 Pa.C.S. § 2902 (unlawful restraint). 18 Pa.C.S. § 3121 (rape). 18 Pa.C.S. § 3122.1 (statutory sexual assault). 18 Pa.C.S. § 3123 (involuntary deviate sexual intercourse). 18 Pa.C.S. § 3124.1 (sexual assault). 18 Pa.C.S. § 3125 (aggravated indecent assault). 18 Pa.C.S. § 3126 (indecent assault). 18 Pa.C.S. § 3127 (indecent exposure). 18 Pa.C.S. § 4302 (incest). 18 Pa.C.S. § 4304 (endangering welfare of children). 18 Pa.C.S. § 5902(b) (prostitution and related offenses). 18 Pa.C.S. § 6312 (sexual abuse of children).	18 Pa.C.S. Ch. 25 (criminal homicide). <i>*18 Pa.C.S. § 2702 (aggravated assault).</i> <i>*18 Pa.C.S. § 2706 (terroristic threats).</i> <i>*18 Pa.C.S. § 2709.1 (stalking).</i> 18 Pa.C.S. § 2901 (kidnapping). 18 Pa.C.S. § 2902 (unlawful restraint). <i>*18 Pa.C.S. § 2903 (false imprisonment).</i> <i>*18 Pa.C.S. § 2910 (luring a child into a motor vehicle or structure).</i> 18 Pa.C.S. § 3121 (rape). 18 Pa.C.S. § 3122.1 (statutory sexual assault). 18 Pa.C.S. § 3123 (involuntary deviate sexual intercourse). 18 Pa.C.S. § 3124.1 (sexual assault). 18 Pa.C.S. § 3125 (aggravated indecent assault). 18 Pa.C.S. § 3126 (indecent assault). 18 Pa.C.S. § 3127 (indecent exposure). <i>*18 Pa.C.S. § 3129 (sexual intercourse with animal).</i> <i>*18 Pa.C.S. § 3130 (conduct relating to sex offenders).</i> <i>*18 Pa.C.S. § 3301 (arson and related offenses).</i> 18 Pa.C.S. § 4302 (incest). <b>(cont.)</b>	The list of convictions considered under the old law was expanded. New convictions are italicized and marked with an *asterisk.  It is important to note that former custody law considered a separate list of charges and convictions. The new law allows the full list of crimes to be considered regardless of whether the parent was ultimately convicted. (see below). Keep in mind that convictions and charges are treated differently.  The only noncriminal conviction included in the new law is PFA violations (23 Pa.C.S. § 6114 – contempt for violation of a PFA order or agreement).

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
			<p>18 Pa.C.S. § 4304 (endangering welfare of children).</p> <p><i>*18 Pa.C.S. § 4305 (dealing in infant children).</i></p> <p>18 Pa.C.S. § 5902(b) (prostitution and related offenses).</p> <p><i>*18 Pa.C.S. § 5903(c) or (d) (obscene and other sexual materials &amp; performances).</i></p> <p><i>*18 Pa.C.S. § 6301 (corruption of minors).</i></p> <p>18 Pa.C.S. § 6312 (relating to sexual abuse of children).</p> <p><i>*18 Pa.C.S. § 6318 (relating to unlawful contact with minor).</i></p> <p><i>*18 Pa.C.S. § 6320 (relating to sexual exploitation of children).</i></p> <p><i>*Section 6114 (contempt for violation of order or agreement). (23 Pa.C.S. § 6114)</i></p> <p><i>*Former 75 Pa.C.S. § 3731 (driving under influence of alcohol or controlled substance).</i></p> <p><i>*75 Pa.C.S. Ch. 38 (driving after imbibing alcohol or utilizing drugs).</i></p> <p><i>*Section 13(a)(1) of the Controlled Substance, Drug, Device and Cosmetic Act – to the extent that it prohibits manuf., sale, delivery, holding, offering for sale or possession of any controlled substance or drug or device.</i></p>	

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b><u>Criminal CHARGES</u></b>	<b><u>Consideration of Criminal Charges</u></b>	<p>A parent who has obtained information relating to a criminal charge for an offense on the list filed against the other parent may move for a temporary custody order to modify an existing custody, partial custody or visitation order. The temporary custody or modification hearing shall be scheduled expeditiously.</p> <p>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. § 5303(b.1).</p>	<p>“A party who has obtained information [relating to availability of criminal charge info in child custody proceeding] or otherwise about a charge filed against the other party for an offense listed under section 5329(a) [consideration of convictions] may move for a temporary custody order or modification of an existing custody order. The court shall hold the hearing ... in an expeditious manner.” § 5330(a).</p> <p>“[T]he court shall consider whether the party who is or has been charged with an offense ... poses a risk of physical, emotional or psychological harm to the child. § 5330(b).</p> <p>“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.” § 5330(c).</p>	<p>The new law does not specifically define the parameters of contact between the offender and the child prior to the evaluation.</p> <p>No substantive changes were made to 42 Pa.C.S. § 1904.</p> <p>The new language specifically provides that the court must consider physical, emotional or psychological harm to the child. This varies from the existing language, which requires the court to consider whether the parent poses a risk of harm to the child.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Criminal CHARGES	Enumeration of Criminal Charges	18 Pa.C.S. Ch. 25 (criminal homicide). 18 Pa.C.S. § 2702 (aggravated assault). 18 Pa.C.S. § 2706 (terroristic threats). 18 Pa.C.S. § 2709.1 (stalking). 18 Pa.C.S. § 2901 (kidnapping). 18 Pa.C.S. § 2902 (unlawful restraint). 18 Pa.C.S. § 2903 (false imprisonment). 18 Pa.C.S. § 3121 (rape). 18 Pa.C.S. § 3122.1 (statutory sexual assault). 18 Pa.C.S. § 3123 (involuntary deviate sexual intercourse). 18 Pa.C.S. § 3124.1 (sexual assault). 18 Pa.C.S. § 3125 (aggravated indecent assault). 18 Pa.C.S. § 3126 (indecent assault). 18 Pa.C.S. § 3127 (indecent exposure). 18 Pa.C.S. § 3301 (arson and related offenses). 18 Pa.C.S. § 4302 (incest). 18 Pa.C.S. § 4304 (endangering welfare of children). 18 Pa.C.S. § 6312 (sexual abuse of children). 23 Pa.C.S. § 6114 (contempt for violation of order or agreement).	18 Pa.C.S. Ch. 25 (criminal homicide). 18 Pa.C.S. § 2702 (aggravated assault). 18 Pa.C.S. § 2706 (terroristic threats). 18 Pa.C.S. § 2709.1 (stalking). 18 Pa.C.S. § 2901 (kidnapping). 18 Pa.C.S. § 2902 (unlawful restraint). 18 Pa.C.S. § 2903 (false imprisonment). <i>*18 Pa.C.S. § 2910 (luring a child into a motor vehicle or structure).</i> 18 Pa.C.S. § 3121 (rape). 18 Pa.C.S. § 3122.1 (statutory sexual assault). 18 Pa.C.S. § 3123 (involuntary deviate sexual intercourse). 18 Pa.C.S. § 3124.1 (sexual assault). 18 Pa.C.S. § 3125 (aggravated indecent assault). 18 Pa.C.S. § 3126 (indecent assault). 18 Pa.C.S. § 3127 (indecent exposure). <i>*18 Pa.C.S. § 3129 (sexual intercourse with animal).</i> <i>*18 Pa.C.S. § 3130 (conduct relating to sex offenders).</i> 18 Pa.C.S. § 3301 (arson and related offenses). 18 Pa.C.S. § 4302 (incest). <i>*18 Pa.C.S. § 4303 (concealing death of child).</i> <b>(cont.)</b>	The list of charges considered by the court was expanded and mirrors the enumerated convictions. (See above). New charges considered under this provision are italicized and marked with an *asterisk.

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Criminal CHARGES (cont.)	Enumeration of Criminal Charges (cont.)		<p>18 Pa.C.S. § 4304 (endangering welfare of children).</p> <p><i>*18 Pa.C.S. § 4305 (dealing in infant children).</i></p> <p><i>*18 Pa.C.S. § 5902(b) (prostitution and related offenses).</i></p> <p><i>*18 Pa.C.S. § 5903(c) or (d) (obscene and other sexual materials &amp; performances).</i></p> <p><i>*18 Pa.C.S. § 6301 (corruption of minors).</i></p> <p>18 Pa.C.S. § 6312 (relating to sexual abuse of children).</p> <p><i>*18 Pa.C.S. § 6318 (relating to unlawful contact with minor).</i></p> <p><i>*18 Pa.C.S. § 6320 (relating to sexual exploitation of children).</i></p> <p>23 Pa.C.S. § 6114 (contempt for violation of order or agreement).</p> <p><i>*Former 75 Pa.C.S. § 3731 (driving under influence of alcohol or controlled substance).</i></p> <p><i>*75 Pa.C.S. Ch. 38 (driving after imbibing alcohol or utilizing drugs).</i></p> <p><i>*Section 13(a)(1) of the Controlled Substance, Drug, Device and Cosmetic Act – to the extent that it prohibits manuf., sale, delivery, holding, offering for sale or possession of any controlled substance or drug or device.</i></p>	

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Parenting Plans</b>	Submission to the Court	<p>“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.”</p> <p>§ 5306.</p> <p>Proposed consent orders must be submitted to court. Pa. R. Civ. P. 1915.7.</p>	<p>“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.”</p> <p>§ 5331.</p>	<p>Like the former law, the new law does not require a parenting plan. The new law gives the court discretion to order a parenting plan in contested custody proceedings.</p> <p>The new law does not provide for assistance from the court in formulating the plan beyond offering a form for parties to use. The former law previously required that, upon request, assistance with formulating the plan would be provided.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Parenting Plans	Contents of Plan	No provision in former custody statute.	<p>“(b) Contents.--A parenting plan shall include the following:</p> <p>(1) The schedule for personal care and control of the child, including parenting time, holidays and vacations.</p> <p>(2) The education and religious involvement, if any, of the child.</p> <p>(3) The health care of the child.</p> <p>(4) Child-care arrangements.</p> <p>(5) Transportation arrangements.</p> <p>(6) A procedure by which proposed changes, disputes &amp; alleged breaches of the custody order may be adjudicated or otherwise resolved through mediation, arbitration, or other means.</p> <p>(7) Any matter specified by the court.</p> <p>(8) Any other matter that serves the best interest of the child.”</p> <p>§ 5331(b).</p> <p>A parenting plan form is provided in the statute and must be used (in substantially the same form) by any party required to submit a plan.</p> <p>§ 5331(c).</p>	The required contents of a parenting plan were not enumerated in the former law.

## Pennsylvania Custody Law Comparison Chart

	Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Informational Programs	<p>The former custody law had no provisions regarding informational programs.</p> <p>Pa. R.C.P. 1915.3 allows that educational programs can be used to meet the court’s 45 days “initial contact” rule.</p>	<p>“(a) The court may direct the parties to attend informational programs concerning parental duties.</p> <p>(b) ... 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.</p> <p>(c) The court may order costs to parties.” § 5332.</p>	<p>The new law reflects current practice in many Pennsylvania counties.</p>
Counseling	<p>“The court may require parents to attend counseling sessions and may consider the recommendation of counselors prior to awarding sole or shared custody....” § 5305.</p>	<p>“(a) The court may, as part of custody order, require parties to attend counseling sessions.</p> <p>(b)... <i>In situations involving abuse, the court may order individual counseling for the abuser but may not order the parties to attend joint counseling.</i></p> <p>(c)... Each party’s participation ... shall be verified by the counselor.</p> <p>(d) The court may order party to pay all or part of counseling costs.” § 5333. (emphasis added)</p>	<p>Unlike the existing law, the new law specifically prohibits the court from ordering a victim of abuse to participate in joint counseling.</p>



## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Guardian Ad Litem</b>	Appointment & Cost Allocation	<p>Appointment of GAL is generally reserved for those cases where a child’s interest may be adversely affected, like adoption. The Superior Court has said that despite bitterness between parents, both parents are focused on what’s best for the child in custody disputes. It is up to the court to discern child’s best interest because both parties and the court are focused on child’s best interests. Thus appointment of GAL is not proper, absent extraordinary circumstances. Bitterness between parents is not enough. <i>C.W. v. K.A.W.</i>, 774 A.2d 745 (Pa. Super. Ct. 2001). In dependency cases, the court appoints a GAL when a child is taken into protective custody or when a dependency petition is filed. Pa. R.J.P. 1151 (A), (D).</p>	<p><b><u>Appointment:</u></b> “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.” § 5334(a).</p> <p><b><u>Abuse:</u></b> “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; or (2) the court is satisfied that the relevant information will be presented to the court only with such appointment.” § 5334(c).</p> <p><b><u>Cost:</u></b> “The court may order a party to pay all or part of the costs of appointing counsel for the child.” § 5335(d).</p>	<p><b><u>Appointment:</u></b> In contrast to case law, which reserves GAL appointment for extraordinary circumstances, the new law gives the court discretion to appoint a GAL – either sua sponte or on the motion of either party.</p> <p><b><u>Qualifications:</u></b> The new law requires the GAL to be a licensed attorney.</p> <p><b><u>Abuse:</u></b> The new law also requires the court to appoint a GAL when substantial allegations of child abuse are made and where the court finds that the assistance of a GAL is necessary to make its final order.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Guardian Ad Litem	Powers & Duties / Presentation of Findings to the Court	<p>Appointment of GAL is generally reserved for those cases where a child’s interest may be adversely affected, like adoption. Superior Court has said that despite bitterness between parents, in custody cases, both parents are focused on what’s best for the child. Court has to discern child’s best interest since both parties and the court are focused on child’s best interests, appointment of GAL is not proper, <i>absent extraordinary circumstances</i>; bitterness between parents is not enough. C.W. v. K.A.W., 774 A.2d 745 (Pa. Super. Ct. 2001) (emphasis added).</p> <p>In dependency cases, the court appoints a GAL when a child is taken into protective custody or when a dependency petition is filed. Pa. R.J.P. 1151 A &amp; D.</p>	<p><b><u>Powers and Duties:</u></b></p> <p>“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:</p> <ol style="list-style-type: none"> <li>(1) ... meet with the child ...</li> <li>(2) be given access to relevant court records, reports of examination ..., psychological and school records</li> <li>(3) Participate in all proceedings.</li> <li>(4) Conduct such further investigation necessary to protect the best interests of the child.</li> <li>(5) Interview potential witnesses, including the child’s parents and caretakers ... The [GAL] may [examine, cross-examine &amp; present evidence]...</li> <li>(6) Make recommendations in a written report to the court... <i>including any services necessary to address the child’s needs &amp; safety. The court shall make the written report part of the record so it can be reviewed by the parties. The parties may file written comments regarding the contents of the report.</i></li> </ol> <p><b>(cont.)</b></p>	<p><b><u>Powers and Duties - GAL Report / Cross Examination:</u></b></p> <p>The new law allows the GAL to submit a written report to the court. It states that a GAL may not testify, but may make legal argument based on relevant evidence that shall be subject to examination. As written, the new law allows a GAL to submit a report to the court that, without cross-examination by the parties, can be relied on by the court in its final determination. The new law only requires examination where the GAL makes legal argument based on relevant evidence in court, not on the contents of a written report. Based on Cyran v. Cyran, 566 A.2d 878 (Pa. Super. Ct. 1989), the provision prohibiting testimony by the GAL may unconstitutionally infringe on the parent’s right to due process. In <i>Cyran</i>, the court adopted facts, recommendations, and conclusions from an evaluator’s report, but did not allow the parents to cross-examine with regard to the contents of the report. On appeal, the court held that “[a] child custody litigant has a <b>(cont.)</b></p>

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Guardian Ad Litem (cont.)</b>	Powers & Duties / Presentation of Findings to the Court (cont.)		<p>(7) Explain the proceedings to the child...</p> <p>(8) Advise the court of the child’s wishes [to the extent appropriate]...[differences between the recommendations and child’s wishes do not create a conflict of interest.]”</p> <p>§ 5334(b). (emphasis added).</p> <p><b><u>GAL Testimony:</u></b></p> <p>“A [GAL] may not testify except as authorized by [the Prof’l Rules of Conduct 3.7], but may make legal argument based on relevant evidence that shall be subject to examination by the parties.”</p> <p>§ 5334(d).</p> <p>Pa. R.Prof’l Conduct 3.7(a) – “A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:</p> <ol style="list-style-type: none"> <li>(1) The testimony relates to an uncontested issue;</li> <li>(2) testimony relates to the nature and value of legal services...</li> <li>(3) disqualification...would work substantial hardship on the client.”</li> </ol>	<p>Due process right to in-court examination of the author of reports adverse to litigants.” <i>Cyran</i>, 566 A.2d at 879 (citing <i>Robinson v. Robinson</i>, 478 A.2d 800 (Pa. Super. Ct. 1984)); see also <i>Ottolini v. Barrett</i>, 954 A.2d 610 (Pa. Super. Ct. 2008).</p>

## Pennsylvania Custody Law Comparison Chart

	Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Counsel for the Child	<p>See GAL discussion above— There is no existing custody statute authorizing GAL or attorney for the child.</p> <p>The Rules of Civil Procedure allow the court to appoint an attorney for the child “on its own motion or the motion of a party.” The Rules also allow the court to assign the cost of child’s counsel on the parties. Pa. R. Civ. P. 1915.11.</p>	<p><b><u>Appointment:</u></b> “The court may appoint counsel to represent the child if the court determines that the appointment will assist in resolving 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.” § 5335(a).</p> <p><b><u>Abuse:</u></b> “Substantial allegations of abuse of the child constitute a reasonable basis for appointing counsel for the child.” § 5335(b).</p> <p><b><u>Cross Examination:</u></b> “Counsel ... shall not be subject to examination unless such counsel testifies in the matter.” § 5335(c).</p> <p><b><u>Costs:</u></b> “The court may order a party to pay all or part of the costs of appointing counsel for the child.” § 5335(d).</p>	<p>The new law creates authority for court to appoint an attorney for the child who is the subject of a custody case and allows the court to assess costs for child’s attorney on either one or both parties. The former law does not contain the same authority; however, the Rules (1915.11) do provide that appointment may be allowed if necessary to ascertain the child’s interests.</p> <p>The new law is similar to the current Rules of Civil Procedure (1915.11) because each allows the court to appoint counsel sua sponte or on motion of a party. But as with GAL appointment, the new law specifically states that “substantial allegations” of child abuse provides a sufficiently reasonable basis for making such an appointment.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Access to Records / Info.	Generally	<p>Generally, “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 the court deems necessary.” § 5309(a).</p>	<p>“A party granted sole or shared legal custody ... shall be provided access to (i) medical, dental, religious and school records of the child; (ii) the address of the child and any other party; (iii) and any other information the court deems necessary or proper.” § 5336(a)(1).</p> <p>“Access to any records or information pertaining to the child may not be denied solely based upon the parent’s physical custody schedule.” § 5336(a)(2).</p> <p>“Upon request, a parent, party or entity possessing any information [re: medical, religious or school records] shall provide it to any party granted sole or shared legal custody.” § 5336(a)(3).</p>	<p>Existing law did not say where the information was to be obtained or who was to provide information. However, the language in the new law indicates that a <i>parent or entity shall provide information upon request</i>. The new law also provides that access to any records or information pertaining to the child may not be denied solely based upon the parent’s physical custody schedule.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Access to Records / Info.	Exceptions	<p><b>Court Order:</b> “The court, in its discretion, may determine not to release any part or parts of the information....but in doing so must state its reason for denial on the record.” § 5309(b).</p> <p><b>Confidential Information:</b> “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.” § 5309(c).</p>	<p><b>Confidential Information:</b> “The court shall not order the disclosure of any of the following information to any parent or party granted custody:</p> <ol style="list-style-type: none"> <li>(1) The address of a victim of abuse.</li> <li>(2) Confidential information from an abuse counselor or shelter.</li> <li>(3) Information protected [by the address confidentiality program].</li> <li>(4) Information independently protected from disclosure by the child’s right to confidentiality [under the Mental Health Procedures Act]... or any other statute.” § 5336(b). <p><b>Other Information:</b> “The court may determine not to release information ..., in which case it shall state the reason for its denial on the record.” § 5336(c).</p> </li></ol>	<p>The new law adds to the information protected from disclosure. The new law includes medical record protection (as provided in other statutes) and Address Confidentiality Program (ACP) information. These additional protections are in deference to the protections provided in HIPPA, the Mental Health Procedures Act, and ACP, 23 Pa.C.S. § 6701 et seq.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Relocation</b>	Applicability / Scope	<p>Existing custody law does not address relocation. Rather, relocation law and procedure is derived from <i>Gruber</i> and its progeny.</p> <p>Gruber v. Gruber, 583 A.2d 434 (Pa. Super. Ct. 1990).</p> <p>(See below – Relocation Factors).</p>	<p><b><u>Relocation Defined:</u></b>                      “Relocation – A change in a residence of the child which significantly impairs the ability of a nonrelocating party to exercise custodial rights.”                      § 5322.</p> <p><b><u>Generally:</u></b>                      “No relocation shall occur unless: (1) every other person with custody rights ... consents; or (2) the court approves the proposed relocation.”                      § 5337(b).</p>	<p>Unlike the former law, the new law defines relocation and prohibits any relocation unless all interested parties’ consent or the court approves the relocation in accordance with the rest of the relocation provisions.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Relocation	Factors	<p>Existing custody law does not address relocation. Rather, relocation law and procedure is derived from <i>Gruber</i> and its progeny.</p> <p><i>Gruber</i> provides that the relocating parent must show the following:</p> <p>(1) The move will “substantially improve the quality of life for the custodial parent and the children and is not the result of momentary whim;”</p> <p>(2) The relocating parent’s motives are good; and</p> <p>(3) Reasonable alternative opportunities exist for visitation.</p> <p>The court presumes that benefits of the move to the custodial parent will flow to the children.</p> <p><i>Gruber v. Gruber</i>, 583 A.2d 434 (Pa. Super. Ct. 1990).</p>	<p><b>Factors:</b> “The court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:</p> <p>(1) The nature, quality, extent of involvement and duration of the child’s relationships with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in child’s life.</p> <p>(2) The age, development, needs of the child and the likely impact relocation will have on the child’s physical, educational and emotional development, taking into consideration any special needs of the child.</p> <p>(3) The feasibility of preserving the relationship between the nonrelocating party and child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.</p> <p>(4) The child’s preference....</p> <p>(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.</p> <p><b>(cont.)</b></p>	<p>The new relocation factors are significantly different from the existing relocation jurisprudence. It adds many factors to those articulated in <i>Gruber</i>.</p> <p><b>Safety:</b> The new law requires the court to give “weighted consideration” to factors affecting the child’s safety.</p>



## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Relocation (cont.)	Factors (cont.)		<p>(6) Whether the relocation will enhance the general quality of life for the party seeking relocation, including, but not limited to, financial or emotional benefit or educational opportunity.</p> <p>(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.</p> <p>(8) The reasons and motivation of each party for seeking or opposing relocation.</p> <p>(9) <i>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.</i></p> <p>(10) Any other best interest factor.” § 5337(h) (emphasis added).</p>	

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## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Relocation</b>	Notice - Generally	<p>The existing law has no statutory notice requirement for relocation.</p>	<p>The party proposing the relocation must notify every other individual who has custody rights to the child.</p> <p>§ 5337(b).</p> <ul style="list-style-type: none"> <li>♦ Any custody order shall include notice of a party’s obligations under section 5337 (relating to relocation). § 5323(c).</li> <li>♦ “This section applies to any proposed relocation.” § 5337(a).</li> </ul> <p><b><u>Time/ Method of Service:</u></b> Notice, by certified mail with return receipt requested, must be given either 60 days before relocation or within 10 days of the date the party knows of the relocation. § 5337(c).</p> <p><b><u>Contents of Notice:</u></b> Except as provided by section 5336 (relating to access to records and information), the following must be included with the notice...:</p> <ul style="list-style-type: none"> <li>(i) address of the ... new residence</li> <li>(ii) mailing address...</li> <li>(iii) names and ages of the individuals in the new residence...</li> <li>(iv) home telephone number of the ...new residence</li> </ul> <p><b>(cont.)</b></p>	<p>The new law contains advance notice provisions that were not required under the former custody law.</p> <p>The new custody law requires that any order for custody include notice of each party’s relocation obligations – including the obligation to give notice to any party with rights to custody of the child in advance of any relocation.</p> <p>The new law requires the notice to contain information pertinent to the move, unless protected by confidentiality or necessary for the safety of the child or the parties. (See above - § 5336, Records and Information / Exceptions).</p> <p>The petitioner must notify all parties of their obligation to file a counter-affidavit within 30 days to preserve their right to object to the relocation.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Relocation (cont.)	Notice - Generally (cont.)		<p>(v) name of the new school district and school</p> <p>(vi) date of the proposed relocation</p> <p>(vii) reasons for the proposed relocation,</p> <p>(viii) proposal for a revised custody schedule</p> <p>(ix) other information which the party proposing the relocation deems appropriate</p> <p>(x) counter-affidavit ... which can be used to object to the proposed relocation and the modification of a custody order.</p> <p>(xi) <i>A warning to the nonrelocating party that if the nonrelocating party does not file an objection with the court within 30 after receipt of the notice, the party shall be foreclosed from objecting to the relocation.</i> The statute also lists the information that must be part of the notice.</p> <p>§ 5337(c)(3) (emphasis added).  <i>"If... information... is not known when the notice is sent but is later known to the party proposing the relocation, then that party shall promptly inform every individual who received notice."</i></p> <p>§ 5337(c)(4) (emphasis added).</p>	

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Relocation</b>	Notice - Failure to Provide Notice	The existing law has no statutory notice requirement for relocation and does not penalize parties for failure to provide advance notice.	<p><b><u>Failure to Provide Notice:</u></b>                      “The court may consider a failure to provide reasonable notice ... as:                      (1) a factor in making a determination ...;                      (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...; and                      (5) Ground for contempt and the imposition of sanctions...;”                      § 5337(j).                      “Any consideration of a failure to provide reasonable notice ... <i>shall be subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.</i>”                      § 5337(k) (emphasis added).</p>	<p><b><u>Failure to Provide Notice:</u></b>                      The new law authorizes the court to draw negative inferences from a party’s failure to provide notice to a nonrelocating party.                      Where the court finds that the relocation was – in whole or in part – the result of abuse, the consequences for failure to provide notice must be diminished.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Relocation</b>	<b>Objections</b>	<p>The existing law has no explicit procedure for objecting to proposed relocation.</p>	<p><b><u>Failure to Object:</u></b>                      “A party entitled to receive notice may file ... an objection ... and seek a temporary or permanent order to prevent the relocation. ... If the party objects to either relocation or modification ... a hearing shall be held. The objection shall be made by completing and returning a counter-affidavit. ... An objection ... shall be filed with the court within 30 days of receipt of the proposed relocation.”                      § 5337(d).                      “If a party who has been given proper notice does not file ... 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.”                      § 5337(d)(4).                      “If no objections are filed, the relocating party shall file an affidavit confirming that proper notice was given, a petition to confirm the relocation details and modify any existing order, and a proposed order.”                      § 5337(e).</p>	<p><b><u>Failure to Object:</u></b>                      If a party fails to object within 30 days, they are <i>prohibited from providing testimony challenging the relocation</i> at the hearing.</p> <p>Where a party does not object, the relocating party may file an affidavit confirming that notice was provided and may petition the court to modify the existing order or to adopt a proposed order.</p>

## Pennsylvania Custody Law Comparison Chart

		Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Relocation</b>	Hearing	<p>No statutory hearing requirement for relocation.</p> <p>In <i>Plowman v. Plowman</i>, the Superior Court explained that the trial court must conduct an evidentiary hearing applying <i>Gruber</i> factors before the move or, if there are exigent circumstances, the court must conduct the hearing within a reasonable time after the move. <i>Plowman v. Plowman</i>, 597 A.2d 701 (Pa. Super. Ct. 1991).</p>	<p><b>Hearing:</b> Generally, “the court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before relocation occurs.”</p> <p>“The court may, on its own motion, hold an expedited full hearing on the proposed relocation before the relocation occurs.”</p> <p>“If the court finds that exigent circumstances exist, the court may approve the relocation pending an expedited full hearing.” § 5337(g).</p> <p><b>Burden of Proof:</b> “The party proposing the relocation has the burden of establishing that the relocation will serve the best interests of the child...” § 5337(i).</p>	<p>The hearing requirements in the new law are generally consistent with the requirements set forth in <i>Plowman</i>. Like <i>Plowman</i>, the new provisions require an expedited hearing prior to relocation but allow the court to approve relocation pending trial where exigent circumstances are present.</p> <p>The new law provides for the court to hold a hearing on its own motion. This is an expansion of <i>Plowman</i>.</p>

## Pennsylvania Custody Law Comparison Chart

	<b>Former Custody Law</b> Effective Until 1.21.11	<b>Act 112</b> Effective as of 1.22.11	<b>Difference</b>
<b>Modification</b>	<p>Subject to UCCJEA, an order entered by a court in Pennsylvania may modify the order to one of shared custody. Also provides that custody proceedings during military deployments are exempted from this provision. § 5310.</p> <p>Case law provides that <i>no substantial change in circumstances is necessary to seek a modification</i> of custody order. The court should inquire into the child’s best interests regardless of whether circumstances changed. <i>Karis v. Karis</i>, 544 A.2d 1328 (Pa. 1988).</p>	<p>Upon petition, a court may modify a custody order to serve the best interest of the child. This is subject to UCCJEA jurisdictional requirements. § 5338.</p>	<p>The new law does not mention an exception for military deployment; however, custody restrictions during military deployments are covered in a separate section of the Pennsylvania Consolidated Statutes, 51 Pa.C.S. § 4109.</p> <p>The new law codifies case law permitting modification when it serves the BIOC, without the need for changed circumstances, provided the jurisdictional requirements of the UCCJEA are met.</p>

## Pennsylvania Custody Law Comparison Chart

	Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
Counsel Fees / Costs / Expenses	<p>Nothing in the custody statute authorizes the court to award fees or other expenses. However, other statutory law authorizes an award of counsel fees to one party where the other participant's actions were "dilatory, obdurate or vexatious," 42 Pa.C.S. § 2503(7), or where a party's conduct in commencing the case was "arbitrary, vexatious, or in bad faith." 42 Pa.C.S. § 2503(9).</p> <p>See <i>Holler v. Smith</i>, 928 A.2d 330 (Pa. Super. Ct 2007) (upholding an award of counsel fees due to vexatious conduct).</p>	<p>"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." § 5339.</p>	<p>The new law provides for specific monetary relief in the custody statute and adds the word "repetitive" to the standard.</p>



## Pennsylvania Custody Law Comparison Chart

	Former Custody Law Effective Until 1.21.11	Act 112 Effective as of 1.22.11	Difference
<b>Court Appointed Child Custody Health Care or Behavioral Health Practitioners</b>	<p>“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 ... 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.” § 5315.</p>	<p>“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 ... 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.” § 5340.</p>	<p>The language in the new law is identical to the former law. The new section was renumbered for consistency.</p>