

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 844 Session of 2017

INTRODUCED BY WHITE, RAFFERTY, EICHELBERGER, RESCHENTHALER, FOLMER, YUDICHAK, STEFANO, YAW AND TARTAGLIONE, SEPTEMBER 6, 2017

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 13, 2018

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child custody, further providing
3 for standing for any form of physical custody or legal
4 custody and, for standing for partial physical custody and <--
5 supervised physical custody AND FOR CONSIDERATION OF CRIMINAL <--
6 CONVICTION.

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

9 ~~Section 1. Section 5324 of Title 23 of the Pennsylvania <--
10 Consolidated Statutes is amended by making a subsection-
11 designation, adding a subsection and adding a paragraph to read:~~

12 SECTION 1. SECTION 5324 OF TITLE 23 OF THE PENNSYLVANIA <--
13 CONSOLIDATED STATUTES IS AMENDED BY ADDING PARAGRAPHS TO READ:
14 § 5324. Standing for any form of physical custody or legal
15 custody.

16 ~~(a) Individuals.~~The following individuals may file an <--
17 action under this chapter for any form of physical custody or
18 legal custody:

1 * * *

2 ~~(4) Except as set forth in subsection (b), if no~~ <--
3 ~~biological parent or adoptive parent of a child has custody~~
4 ~~of the child, an individual who establishes by clear and~~
5 ~~convincing evidence that the individual:~~

6 ~~(i) assumes or is willing to assume responsibility~~
7 ~~for the child; and~~

8 ~~(ii) has a sustained, substantial and sincere~~
9 ~~interest in the welfare of the child, which may be~~
10 ~~demonstrated by factors involving the nature, quality,~~
11 ~~extent and length of involvement by the individual in the~~
12 ~~child's life, including, but not limited to:~~

13 ~~(A) the financial support or assistance paid by~~
14 ~~the individual for the benefit of the child; and~~

15 ~~(B) whether the individual has previously stood~~
16 ~~in loco parentis to the child.~~

17 ~~(b) Exceptions. Subsection (a) (4) does not apply to any of~~
18 ~~the following:~~

19 ~~(1) Intervention in a dependency proceeding.~~

20 ~~(2) An action by a party who has participated in a~~
21 ~~dependency proceeding relating to the child.~~

22 ~~(3) A challenge to the placement of the child in:~~

23 ~~(i) foster care; or~~

24 ~~(ii) kinship care.~~

25 ~~(4) A challenge to an order of permanent legal custody~~
26 ~~under 42 Pa.C.S. § 6351(f.1) (3) or (4) (relating to~~
27 ~~disposition of dependent child).~~

28 Section 1.1. Section 5325(2) of Title 23 is amended to read:

29 ~~(4) SUBJECT TO PARAGRAPH (5), AN INDIVIDUAL WHO~~ <--
30 ~~ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE ALL OF THE~~

1 FOLLOWING:

2 (I) THE INDIVIDUAL HAS ASSUMED OR IS WILLING TO
3 ASSUME RESPONSIBILITY FOR THE CHILD.

4 (II) THE INDIVIDUAL HAS A SUSTAINED, SUBSTANTIAL AND
5 SINCERE INTEREST IN THE WELFARE OF THE CHILD. IN
6 DETERMINING WHETHER THE INDIVIDUAL MEETS THE REQUIREMENTS
7 OF THIS SUBPARAGRAPH, THE COURT MAY CONSIDER, AMONG OTHER
8 FACTORS, THE NATURE, QUALITY, EXTENT AND LENGTH OF THE
9 INVOLVEMENT BY THE INDIVIDUAL IN THE CHILD'S LIFE.

10 (III) NEITHER PARENT HAS ANY FORM OF CARE AND
11 CONTROL OF THE CHILD.

12 (5) PARAGRAPH (4) SHALL NOT APPLY IF:

13 (I) A DEPENDENCY PROCEEDING INVOLVING THE CHILD HAS
14 BEEN INITIATED OR IS ONGOING; OR

15 (II) THERE IS AN ORDER OF PERMANENT LEGAL CUSTODY
16 UNDER 42 PA.C.S. § 6351(A)(2.1) OR (F.1)(3) (RELATING TO
17 DISPOSITION OF DEPENDENT CHILD).

18 SECTION 2. SECTIONS 5325(2) AND 5329(A) INTRODUCTORY
19 PARAGRAPH OF TITLE 23 ARE AMENDED TO READ:

20 § 5325. Standing for partial physical custody and supervised
21 physical custody.

22 In addition to situations set forth in section 5324 (relating
23 to standing for any form of physical custody or legal custody),
24 grandparents and great-grandparents may file an action under
25 this chapter for partial physical custody or supervised physical
26 custody in the following situations:

27 * * *

28 (2) where THE RELATIONSHIP WITH THE CHILD BEGAN EITHER <--
29 WITH THE CONSENT OF A PARENT OF THE CHILD OR UNDER A COURT
30 ORDER AND WHERE the parents of the child [have been separated

1 for a period of at least six months or]:

2 (i) have commenced [and continued] a proceeding [to
3 dissolve their marriage] for custody; and

4 (ii) do not agree as to whether the grandparents or
5 great grandparents should have custody under this
6 section; or

7 * * *

8 § 5329. CONSIDERATION OF CRIMINAL CONVICTION. <--

9 (A) OFFENSES.--WHERE A PARTY SEEKS ANY FORM OF CUSTODY, THE
10 COURT SHALL CONSIDER WHETHER THAT PARTY OR MEMBER OF THAT
11 PARTY'S HOUSEHOLD HAS BEEN CONVICTED OF OR HAS PLEADED GUILTY OR
12 NO CONTEST TO ANY OF THE OFFENSES IN THIS SECTION OR AN OFFENSE
13 IN ANOTHER JURISDICTION SUBSTANTIALLY EQUIVALENT TO ANY OF THE
14 OFFENSES IN THIS SECTION. THE COURT SHALL CONSIDER SUCH CONDUCT
15 AND DETERMINE THAT THE PARTY DOES NOT POSE A THREAT OF HARM TO
16 THE CHILD BEFORE MAKING ANY ORDER OF CUSTODY TO THAT [PARENT]
17 PARTY WHEN CONSIDERING THE FOLLOWING OFFENSES:

18 * * *

19 Section 2 3. The addition of 23 Pa.C.S. § ~~5324(a)(4) and (b)~~ <--
20 5324(4) AND (5) shall apply to all custody proceedings <--
21 irrespective of whether the proceeding was commenced before, on
22 or after the effective date of this section.

23 Section 3 4. This act shall take effect in 60 days. <--