

Child Custody Statute

§5321. Scope of chapter

This chapter applies to disputes relating to child custody matters.

§5322. Definitions

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

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

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

“**Agency.**” Any organization, society, institution, court facility or other entity which provides for the care of a child. The term does not include a county Children and Youth Social Service Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Partial physical custody;
- (2) Shared physical custody; or
- (3) Supervised physical custody.

§5323. Award of custody.

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

- (1) Shared physical custody.

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

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

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

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

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

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

(g) Contempt for noncompliance with any custody order.

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

- (I) Imprisonment for a period of not more than six months.
- (ii) A fine of not more than \$500.
- (iii) Probation for a period of not more than six months.
- (iv) An order for nonrenewal, suspension or denial of operating privilege under section 4355 (relating to denial or suspension of licenses).
- (v) Counsel fees and costs.

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

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

- (1) one party physically vacating the residence; or
- (2) an order awarding one party exclusive possession of the residence.

23 Pa.C.S. §5324 Standing for any form of physical custody or legal custody.

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

- (1) A parent of the child.
- (2) A person who stands in loco parentis to the child.
- (3) A grandparent of the child who is not in loco parentis to the child:

- (I) whose relationship with the child began either with the consent of a parent of the child or under a court order;
 - (ii) who assumes or is willing to assume responsibility for the child; and
 - (iii) when one of the following conditions is met:
 - (A) the child has been determined to be a dependent child under 42 Pa.C.S. Ch. 63 (relating to juvenile matters);
 - (B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or
 - © the child has, for a period of at least 12 consecutive months, resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.
- (4) Subject to paragraph (5), an individual who establishes by clear and convincing evidence all of the following:
- (I) The individual has assumed or is willing to assume responsibility for the child.
 - (ii) The individual has a sustained, substantial and sincere interest in the welfare of the child. In determining whether the individual meets the requirements of this subparagraph, the court may consider, among other factors, the nature, quality, extent and length of the involvement by the individual in the child's life.
 - (iii) Neither parent has any form of care and control of the child.
- (5) Paragraph (4) shall not apply if:
- (I) a dependency proceeding involving the child has been initiated or is ongoing; or
 - (ii) there is an order of permanent legal custody under 42 Pa.C.S. § 6351(a)(2.1) or (f.1)(3) (relating to disposition of dependent child).

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

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

- (1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;
- (2) where the relationship with the child began either with the consent of a parent of the child or under a court order and where the parents of the child:
 - (I) have commenced a proceeding for custody; and
 - (ii) do not agree as to whether the grandparents or great-grandparents should have custody under this section; or
- (3) when the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, an action must be filed within six months after the removal of the child from the home.

§ 5326. Effect of adoption.

Any rights to seek physical custody or legal custody rights and any custody rights that have been granted under section 5324 (relating to standing for any form of physical custody or legal custody) or

5325 (relating to standing for partial physical custody and supervised physical custody) to a grandparent or great-grandparent prior to the adoption of the child by an individual other than a stepparent, grandparent or great-grandparent shall be automatically terminated upon such adoption.

§ 5327. Presumption in cases concerning primary physical custody.

- (a) Between parents.--In any action regarding the custody of the child between the parents of the child, there shall be no presumption that custody should be awarded to a particular parent.
- (b) Between a parent and third party.--In any action regarding the custody of the child between a parent of the child and a nonparent, there shall be a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.
- © Between third parties.--In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party.

§5328. Factors to consider when awarding custody.

(a) **Factors.** In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.
 - (2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).
- (3) The parental duties performed by each party on behalf of the child.
- (4) The need for stability and continuity in the child's education, family life and community life.
- (5) The availability of extended family.
- (6) The child's sibling relationships.
- (7) The well-reasoned preference of the child, based on the child's maturity and judgment.
- (8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.
- (9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.
- (10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.
- (11) The proximity of the residence of the parties.
- (12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.
- (13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

- (14) The history of drug or alcohol abuse of a party or member of a party's household.
- (15) The mental and physical condition of a party or member of a party's household.
- (16) Any other relevant factor.

(b) Gender neutral. In making a determination under subsection (a), no party shall receive preference based on gender in any award granted under this chapter.

(c) Grandparents and great-grandparents.

(1) In ordering partial physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2) (relating to standing for partial physical custody and supervised physical custody), the court shall consider the following:

- (I) the amount of personal contact between the child and the party prior to the filing of the action;
- (ii) whether the award interferes with any parent-child relationship; and
- (iii) whether the award is in the best interest of the child.

(2) In ordering partial physical custody or supervised physical custody to a parent's parent or grandparent who has standing under section 5325(3), the court shall consider whether the award:

- (I) interferes with any parent-child relationship; and
- (ii) is in the best interest of the child.

§5329. Consideration of criminal conviction.

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

- 18 Pa.C.S. Ch. 25 (relating to criminal homicide).
- 18 Pa.C.S. §2702 (relating to aggravated assault).
- 18 Pa.C.S. §2706 (relating to terroristic threats).
- 18 Pa.C.S. §2709.1 (relating to stalking).
- 18 Pa.C.S. §2901 (relating to kidnapping).
- 18 Pa.C.S. §2902 (relating to unlawful restraint).
- 18 Pa.C.S. §2903 (relating to false imprisonment).
- 18 Pa.C.S. §2910 (relating to luring a child into a motor vehicle or structure).
- 18 Pa.C.S. §3121 (relating to rape).
- 18 Pa.C.S. §3122.1 (relating to statutory sexual assault).
- 18 Pa.C.S. §3123 (relating to involuntary deviate sexual intercourse).
- 18 Pa.C.S. §3124.1 (relating to sexual assault).
- 18 Pa.C.S. §3125 (relating to aggravated indecent assault).
- 18 Pa.C.S. §3126 (relating to indecent assault).
- 18 Pa.C.S. §3127 (relating to indecent exposure).
- 18 Pa.C.S. §3129 (relating to sexual intercourse with animal).
- 18 Pa.C.S. §3130 (relating to conduct relating to sex offenders).
- 18 Pa.C.S. §3301 (relating to arson and related offenses).
- 18 Pa.C.S. §4302 (relating to incest).
- 18 Pa.C.S. §4303 (relating to concealing death of child).

18 Pa.C.S. §4304 (relating to endangering welfare of children).
18 Pa.C.S. §4305 (relating to dealing in infant children).
18 Pa.C.S. §5902(b) (relating to prostitution and related offenses).
18 Pa.C.S. §5903(c) or (d) (relating to obscene and other sexual materials and performances).
18 Pa.C.S. §6301 (relating to corruption of minors).
18 Pa.C.S. §6312 (relating to sexual abuse of children).
18 Pa.C.S. §6318 (relating to unlawful contact with minor).
18 Pa.C.S. §6320 (relating to sexual exploitation of children).
Section 6114 (relating to contempt for violation of order or agreement).

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

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

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

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

(b.1) Parent convicted of certain sexual offenses.--

(1) Notwithstanding any provision of this chapter to the contrary and subject to paragraph (2), if a parent who is a victim of any of the offenses set forth in this paragraph objects, no court shall award any type of custody set forth in section 5323 (relating to award of custody) to the other parent of a child conceived as a result of any of the following offenses for which the other parent has been convicted:

18 Pa.C.S. § 3121.

18 Pa.C.S. § 3122.1.

18 Pa.C.S. § 3124.1, where the offense involved sexual intercourse.

18 Pa.C.S. § 3124.2 (relating to institutional sexual assault), where the offense involved sexual intercourse.

18 Pa.C.S. § 4302.

(2) A court may award any type of custody set forth in section 5323 to a parent who has been convicted of an offense under paragraph (1) if:

(I) the parent who is a victim had an opportunity to address the court;

(ii) the child is of suitable age and consents to the custody order; and

(iii) the court determines the award is in the best interest of the child.

(3) Paternity of the child shall be established by voluntary acknowledgment of paternity or blood, genetic or other paternity testing acceptable to the court. The cost of the testing shall be borne by the parent who was convicted of the offense.

(c) Initial evaluation. At the initial in-person contact with the court, the judge, conference officer or other appointed individual shall perform an initial evaluation to determine whether the party or household member who committed an offense under subsection (a) poses a threat to the child and whether counseling is necessary. The initial evaluation shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by

a mental health professional if the court determines it is necessary.

(d) Counseling.

(1) Where the court determines under subsection (c) that counseling is necessary, it shall appoint a qualified professional specializing in treatment relating to the particular offense to provide counseling to the offending individual.

(2) Counseling may include a program of treatment or individual therapy designed to rehabilitate the offending individual which addresses, but is not limited to, issues regarding physical and sexual abuse, the psychology of the offender and the effects of the offense on the victim.

(e) Subsequent evaluation.

(1) At any time during or subsequent to the counseling under subsection (d), the court may require another evaluation to determine whether further counseling is necessary.

(2) If the court awards custody to a party who committed an offense under subsection (a) or who shares a household with an individual who committed an offense under subsection (a), the court may require subsequent evaluations on the rehabilitation of the offending individual and the well-being of the child subsequent to the order. If upon review of a subsequent evaluation the court determines that the offending individual poses a threat of physical, emotional or psychological harm to the child, the court may schedule a hearing to modify the custody order.

(f) Costs. The court may order a party to pay all or part of the costs of the counseling and evaluations under this section.

§ 5329.1. Consideration of child abuse and involvement with protective services.

(a) Information sharing.--In accordance with section 6340(a)(5.1) (relating to release of information in confidential reports), where a party seeks any form of custody, subject to the examination of the parties, the court shall determine:

(1) With respect to child abuse under Chapter 63 (relating to child protective services) or a child who is a victim of a crime under 18 Pa.C.S. (relating to crimes and offenses) which would constitute abuse under Chapter 63:

(I) Whether the child is the subject of an indicated or founded report of child abuse.

(ii) Whether a party or a member of the party's household has been identified as the perpetrator in an indicated or founded report of child abuse.

(iii) The date and circumstances of the child abuse.

(iv) The jurisdiction where the child abuse investigation took place.

(2) With respect to child protective services or general protective services under Chapter 63:

(I) Whether a party or a member of a party's household has been provided services.

(ii) The type of services provided.

(iii) The circumstances surrounding the provision of services.

(iv) The status of services.

(v) The date the services were provided.

(vi) The jurisdiction where the services were provided.

(b) Cooperation.--The following apply:

(1) The Department of Public Welfare and the county children and youth social service agency shall fully cooperate with the court and assist the court in fulfilling its duties under this section.

(2) The Department of Public Welfare and the county children and youth social service agency

shall fully cooperate with the governing authority in order to implement the provisions of this section.

(3) The governing authority shall develop procedures to implement the provisions of this section.

(4) As used in this subsection, the term "governing authority" shall have the meaning given to it in 42 Pa.C.S. § 102 (relating to definitions).

§5330. Consideration of criminal charge.

(a) **Expedited hearing.** A party who has obtained information under 42 Pa.C.S. §1904 (relating to availability of criminal charge information in child custody proceedings) or otherwise about a charge filed against the other party for an offense listed under section 5329(a) (relating to consideration of criminal conviction) may move for a temporary custody order or modification of an existing custody order. The court shall hold the hearing under this subsection in an expeditious manner.

(b) **Risk of harm.** In evaluating any request under subsection (a), the court shall consider whether the party who is or has been charged with an offense set forth in section 5329(a) poses a risk of physical, emotional or psychological harm to the child.

(c) **No prejudice.** Failure to either apply for information under 42 Pa.C.S. §1904 or act under this section shall not prejudice any party in a custody proceeding.

§5331. Parenting plan.

(a) **Purpose.** In a contested custody proceeding, the court may require the parties to submit parenting plans for the care and custody of the child to aid the court in resolving the custody dispute. A parenting plan and the position of a party as set forth in that parenting plan shall not be admissible as evidence by another party.

(b) **Contents.** A parenting plan shall include the following:

(1) The schedule for personal care and control of the child, including parenting time, holidays and vacations.

(2) The education and religious involvement, if any, of the child.

(3) The health care of the child.

(4) Child-care arrangements.

(5) Transportation arrangements.

(6) A procedure by which proposed changes, disputes and alleged breaches of the custody order may be adjudicated or otherwise resolved through mediation, arbitration or other means.

(7) Any matter specified by the court.

(8) Any other matter that serves the best interest of the child.

(c) **Form.** If the court orders the parties to propose a parenting plan, it shall be submitted to the court in substantially the following form:

CAPTION

PARENTING PLAN

This parenting plan involves the following child/children:

- | | <u>Child's Name</u> | <u>Age</u> | <u>Where does this child live?</u> |
|----|---------------------|------------|------------------------------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |

If you have children not addressed by this parenting plan, name here:

- | | <u>Child's Name</u> | <u>Age</u> | <u>Where does this child live?</u> |
|----|---------------------|------------|------------------------------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |

Legal Custody (who makes decisions about certain things):

Circle one

Diet	Both parties decide together /	Plaintiff /	Defendant
Medical Care	Both parties decide together /	Plaintiff /	Defendant
Mental Health Care	Both parties decide together /	Plaintiff /	Defendant
Discipline	Both parties decide together /	Plaintiff /	Defendant
Choice of School	Both parties decide together /	Plaintiff /	Defendant
Choice of Study	Both parties decide together /	Plaintiff /	Defendant
School Activities	Both parties decide together /	Plaintiff /	Defendant
Sport Activities	Both parties decide together /	Plaintiff /	Defendant
Additional Items	Both parties decide together /	Plaintiff /	Defendant

Explain what process you will use to make decisions? (For example, the parent confronted with or anticipating the choice will call the other parent when the choice presents itself, and the other parent must agree or disagree within 24 hours of any deadline)

Physical Custody (where the child/children live)

The child's/children's residence is with _____.

Describe which days and which times of the day the child/children will be with each person:

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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Describe where and when the child/children will be dropped off and/or picked up (day and time of day)?

Drop-Off

Where _____

When _____

Pick-Up

Where _____

When _____

If one of you doesn't show up, how long will the other wait? _____
 If there are any extraordinary costs (taxi, train, airplane, etc.), who will pay for which costs? _____

HOLIDAYS

Where will the child/children stay?

Holiday	Year A	Year B	Every year
Martin Luther King Day	_____	_____	_____
President's Day	_____	_____	_____
Easter	_____	_____	_____
Memorial Day	_____	_____	_____
Fourth of July	_____	_____	_____
Labor Day	_____	_____	_____
Yom Kippur	_____	_____	_____
Rosh Hashanah	_____	_____	_____
Thanksgiving	_____	_____	_____
Vacation after Thanksgiving	_____	_____	_____
Christmas Vacation	_____	_____	_____
Kwanzaa	_____	_____	_____
New Year's Eve/Day	_____	_____	_____
Spring Vacation	_____	_____	_____
Easter Sunday	_____	_____	_____
Child's Birthday	_____	_____	_____
Mother's Day	_____	_____	_____
Father's Day	_____	_____	_____
Other	_____	_____	_____
Other	_____	_____	_____
Other	_____	_____	_____

Summer Vacation Plans

Special Activities or School Activities

<u>Child's Name</u>	<u>Activity</u>	<u>Will both of you attend?</u> <u>If not, which of you will attend?</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Temporary changes to this parenting schedule

From time to time, one of you might want or need to rearrange the parenting time schedule due to work, family or other events. You can attempt to agree on these changes. If you cannot agree, the parent receiving the request will make the final decision.

The parent asking for the change will ask

_____ in person _____ by letter/mail _____ by phone
 No later than _____ 12 hours _____ 24 hours _____ 1 week _____ 1 month
 The parent being asked for a change will reply
 _____ in person _____ by letter/mail _____ by phone
 No later than _____ 12 hours _____ 24 hours _____ 1 week _____ 1 month

May parents contact one another? _____
 When the child/children is/are with one of you, how may they contact the other parent? _____

When and how may _____ contact the child? _____

In the event that proposed changes, disputes or alleged breaches of this parenting plan and custody order are necessary or desired, the parties agree that such changes will be addressed by the following method (specify method of arbitration, mediation, court action, etc.): _____

The following matter or matters as specified by the court: _____

Other (Anything else you want to agree on) _____

Date _____

 Signature of Mother

Date _____

 Signature of Father

Date _____

 Signature of Witness

§5332. Informational programs.

(a) **Attendance.** The court may direct the parties to attend informational programs concerning parental duties.

(b) **Process not delayed.** Subsequent proceedings and the entry of any order or decree shall not be delayed because of the lack of participation in any informational program by one of the parties.

(c) **Costs.** The court may order a party to pay all or part of the costs of the informational programs under this section.

§5333. Counseling as part of order.

(a) **Attendance.** The court may, as part of the custody order, require the parties to attend counseling sessions.

(b) **Abuse.** In situations involving abuse, the court may order individual counseling for the abuser but may not order the parties to attend joint counseling.

(c) **Verification.** Each party's participation in the counseling sessions shall be verified by the counselor.

(d) **Costs.** The court may order a party to pay all or part of the costs of the counseling sessions under this section.

§5334. Guardian *ad litem* for child.

(a) **Appointment.** The court may on its own motion or the motion of a party appoint a guardian *ad litem* to represent the child in the action. The court may assess the cost upon the parties or any of them or as otherwise provided by law. The guardian *ad litem* must be an attorney at law.

(b) **Powers and duties.** The guardian *ad litem* shall be charged with representation of the legal interests and the best interests of the child during the proceedings and shall do all of the following:

(1) If appropriate to the child's age and maturity, meet with the child as soon as possible following the appointment, and on a regular basis thereafter.

(2) On a timely basis, be given access to relevant court records, reports of examination of the parents or other custodian of the child and medical, psychological and school records.

(3) Participate in all proceedings.

(4) Conduct such further investigation necessary to ascertain relevant facts for presentation to the court.

(5) Interview potential witnesses, including the child's parents and caretakers, if any. The guardian *ad litem* may examine and cross-examine witnesses and present witnesses and evidence necessary to protect the best interests of the child.

(6) Make specific recommendations in a written report to the court relating to the best interests of the child, including any services necessary to address the child's needs and safety. The court shall make the written report part of the record so that it may be reviewed by the parties. The parties may file with the court written comments regarding the contents of the report. The comments filed by the parties shall also become part of the record.

(7) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition and emotional condition.

(8) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court. A difference between the child's wishes under this paragraph and the recommendations under paragraph (6) shall not be considered a conflict of interest for the guardian *ad litem*.

(c) **Abuse.** If substantial allegations of abuse of the child are made, the court shall appoint a guardian *ad litem* for the child if:

(1) counsel for the child is not appointed under section 5335 (relating to counsel for the child); or

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

(d) **Evidence subject to examination.** A guardian *ad litem* may not testify except as authorized by Rule 3.7 of the Rules of Professional Conduct, but may make legal argument based on relevant evidence that shall be subject to examination by the parties.

(e) **Costs.** The court may order a party to pay all or part of the costs of appointing a guardian *ad litem* under this section.

§5335. Counsel for the child.

(a) **Appointment.** The court may appoint counsel to represent the child if the court determines that the appointment will assist in resolving the issues in the custody proceeding. If a child has legal counsel and a guardian *ad litem*, counsel shall represent the legal interests of the child and the guardian *ad litem* shall represent the best interests of the child.

(b) **Abuse.** Substantial allegations of abuse of the child constitute a reasonable basis for appointing counsel for the child.

(c) **Not subject to examination.** Counsel appointed by the court for the child shall not be subject to examination unless such counsel testifies in the matter.

(d) **Costs.** The court may order a party to pay all or part of the costs of appointing counsel for the child under this section.

§5336. Access to records and information.

(a) **General rule.** Except as provided in subsections (b) and (c):

(1) A party granted sole or shared legal custody under section 5323 (relating to award of custody) shall be provided access to:

- (I) the medical, dental, religious and school records of the child;
- (ii) the address of the child and any other party; and
- (iii) any other information that the court deems necessary or proper.

(2) Access to any records and information pertaining to the child may not be denied solely based upon a parent's physical custody schedule.

(3) Upon request, a parent, party or entity possessing any information set forth in paragraph (1) shall provide it to any party granted sole or shared legal custody.

(b) **Nondisclosure of confidential information.** The court shall not order the disclosure of any of the following information to any parent or party granted custody:

- (1) The address of a victim of abuse.
- (2) Confidential information from an abuse counselor or shelter.
- (3) Information protected under Chapter 67 (relating to domestic and sexual violence victim address confidentiality).
- (4) Information independently protected from disclosure by the child's right to confidentiality under the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act, or any other statute.

(c) **Other information.** The court may determine not to release information set forth in subsection (a), in which case it shall state the reason for its denial on the record.

§5337. Relocation.

(a) **Applicability.** This section applies to any proposed relocation.

(b) **General rule.** No relocation shall occur unless:

- (1) every individual who has custody rights to the child consents to the proposed relocation;
- or
- (2) the court approves the proposed relocation.

(c) **Notice.**

- (1) The party proposing the relocation shall notify every other individual who has custody

rights to the child.

- (2) Notice, sent by certified mail, return receipt requested, shall be given no later than:
- (I) The 60th day before the date of the proposed relocation; or
 - (ii) the tenth day after the date that the individual knows of the relocation, if:
 - (A) the individual did not know and could not reasonably have known of the relocation in sufficient time to comply with the 60-day notice; and
 - (B) it is not reasonably possible to delay the date of relocation so as to comply with the 60-day notice.
- (3) Except as provided by section 5336 (relating to access to records and information), the following information, if available, must be included with the notice of the proposed relocation:
- (I) The address of the intended new residence.
 - (ii) The mailing address, if not the same as the address of the intended new residence.
 - (iii) Names and ages of the individuals in the new residence, including individuals who intend to live in the new residence.
 - (iv) The home telephone number of the intended new residence, if available.
 - (v) The name of the new school district and school.
 - (vi) The date of the proposed relocation.
 - (vii) The reasons for the proposed relocation.
 - (viii) A proposal for a revised custody schedule.
 - (ix) Any other information which the party proposing the relocation deems appropriate.
 - (x) A counter-affidavit as provided under subsection (d)(1) which can be used to object to the proposed relocation and the modification of a custody order.
 - (xi) A warning to the nonrelocating party that if the nonrelocating party does not file with the court an objection to the proposed relocation within 30 days after receipt of the notice, that party shall be foreclosed from objecting to the relocation.
- (4) If any of the information set forth in paragraph (3) is not known when the notice is sent but is later made known to the party proposing the relocation, then that party shall promptly inform every individual who received notice under this subsection.

(d) Objection to proposed relocation.

(1) A party entitled to receive notice may file with the court an objection to the proposed relocation and seek a temporary or permanent order to prevent the relocation. The nonrelocating party shall have the opportunity to indicate whether he objects to relocation or not, and whether he objects to modification of the custody order or not. If the party objects to either relocation or modification of the custody order, a hearing shall be held as provided in subsection (g)(1). The objection shall be made by completing and returning to the court a counter-affidavit, which shall be verified subject to penalties under 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities), in substantially the following form:

COUNTER-AFFIDAVIT REGARDING RELOCATION

This proposal of relocation involves the following child/children:

<u>Child's Name</u>	<u>Age</u>	<u>Currently residing at:</u>
_____	_____	_____

Child's Name Age Currently residing at:

Child's Name Age Currently residing at:

I have received a notice of proposed relocation and

1. _____ I do not object to the relocation and I do not object to the modification of the custody order consistent with the proposal for revised custody schedule as attached to the notice.
2. _____ I do not object to the relocation, but I do object to modification of the custody order and request that a hearing be scheduled:
 - a. _____ Prior to allowing (name of child/children) to relocate.
 - b. _____ After the child/children relocate.
3. _____ I do object to the relocation and I do object to the modification of the custody order, and I further request that a hearing be held on both matters prior to the relocation taking place.

I understand that in addition to checking (2) or (3) above, I must also file this notice with the court in writing and serve it on the other party by certified mail, return receipt requested. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I shall be foreclosed from objecting to the relocation.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Date: _____

- _____
- (2) An objection made under this subsection shall be filed with the court within 30 days of receipt of the proposed relocation notice, and served on the other party by certified mail, return receipt requested.
 - (3) If notice of the proposed relocation has been properly given and no objection to the proposed relocation has been filed in court, then it shall be presumed that the nonrelocating party has consented to the proposed relocation.
 - (4) If a party who has been given proper notice does not file with the court an objection to the relocation within 30 days after receipt of the notice but later petitions the court for review of the custodial arrangements, the court shall not accept testimony challenging the relocation.
 - (e) Confirmation of relocation.** If no objection to the proposed relocation is filed under subsection (d), the party proposing the relocation shall file the following with the court prior to the relocation:
 - (1) an affidavit stating that the party provided notice to every individual entitled to notice, the time to file an objection to the proposed relocation has passed and no individual entitled to receive notice has filed an objection to the proposed relocation;
 - (2) proof that proper notice was given in the form of a return receipt with the signature of the addressee and the full notice that was sent to the addressee.
 - (3) a petition to confirm the relocation and modify any existing custody order; and
 - (4) a proposed order containing the information set forth in subsection (c)(3).
 - (f) Modification of custody order.** If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party both has no objection to the proposed relocation and no objection to the modification of the custody order consistent with the proposal for revised custody schedule, the court

may modify the existing custody order by approving the proposal for revised custody schedule submitted under section 5337(c)(viii), and shall specify the method by which its future modification can be made if desired by either party. If a counter-affidavit regarding relocation is filed with the court which indicates the nonrelocating party objects either to the proposed relocation or to the modification of the custody order consistent with the proposal for revised custody schedule, the court shall modify the existing custody order only after holding a hearing to establish the terms and conditions of the order pursuant to the relocation indicating the rights, if any, of the nonrelocating parties.

(g) Hearing.

(1) Except as set forth in paragraph (3), the court shall hold an expedited full hearing on the proposed relocation after a timely objection has been filed and before the relocation occurs.

(2) Except as set forth in paragraph (3), the court may, on its own motion, hold an expedited full hearing on the proposed relocation before the relocation occurs.

(3) Notwithstanding paragraphs (1) and (2), if the court finds that exigent circumstances exist, the court may approve the relocation pending an expedited full hearing.

(4) If the court approves the proposed relocation, it shall:

(I) modify any existing custody order; or

(ii) establish the terms and conditions of a custody order.

(h) Relocation factors. In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

(1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

(2) The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving the relationship between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.

(6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.

(7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.

(10) Any other factor affecting the best interest of the child.

(I) Burden of proof.

(1) The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the factors set forth in subsection (h).

(2) Each party has the burden of establishing the integrity of that party's motives in either seeking the relocation or seeking to prevent the relocation.

(j) Failure to provide reasonable notice. The court may consider a failure to provide reasonable notice of a proposed relocation as:

(1) a factor in making a determination regarding the relocation;

(2) a factor in determining whether custody rights should be modified;

(3) a basis for ordering the return of the child to the nonrelocating party if the relocation has occurred without reasonable notice;

- (4) sufficient cause to order the party proposing the relocation to pay reasonable expenses and counsel fees incurred by the party objecting to the relocation; and
- (5) a ground for contempt and the imposition of sanctions against the party proposing the relocation.
- (k) **Mitigation.** Any consideration of a failure to provide reasonable notice under subsection (I) shall be subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.
- (l) **Effect of relocation prior to hearing.** If a party relocates with the child prior to a full expedited hearing, the court shall not confer any presumption in favor of the relocation.

§5338. Modification of existing order.

(a) **Best interest of the child.** Upon petition, a court may modify a custody order to serve the best interest of the child.

(b) **Applicability.** This section shall apply to any custody order entered by a court of this Commonwealth or any other state subject to the jurisdictional requirements set forth in Chapter 54 (relating to uniform child custody jurisdiction and enforcement).

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

Under this chapter, a court may award reasonable interim or final counsel fees, costs and expenses to a party if the court finds that the conduct of another party was obdurate, vexatious, repetitive or in bad faith.

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

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