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Proposed Legislation

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos)
Part VI. Children and Minors
Chapter 53. Child Custody (Refs & Annos)

23 Pa.C.S.A. § 5329

§ 5329. Consideration of criminal conviction

Currentness

(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. § 2701 (relating to simple assault).

18 Pa.C.S. § 2702 (relating to aggravated assault).

18 Pa.C.S. § 2705 (relating to recklessly endangering another person).

18 Pa.C.S. § 2706 (relating to terroristic threats).

18 Pa.C.S. § 2709.1 (relating to stalking).

18 Pa.C.S. § 2718 (relating to strangulation).

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. § 2904 (relating to interference with custody of children).

18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure).

18 Pa.C.S. Ch. 30 (relating to human trafficking).

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. § 5533 (relating to cruelty to animal).

18 Pa.C.S. § 5534 (relating to aggravated cruelty to animal).

18 Pa.C.S. § 5543 (relating to animal fighting).

18 Pa.C.S. § 5544 (relating to possession of animal fighting paraphernalia).

18 Pa.C.S. § 5902(b) or (b.1) (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),¹ 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.

(a.1) Determination.--A criminal conviction specified under subsection (a) shall not by itself be determinative in the awarding of custody. The court shall examine the totality of the circumstances when issuing a custody order that is in the best interest of the child.

(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.

Credits

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011]. Amended 2012, April 12, P.L. 241, No. 32, § 1, effective in 60 days [June 11, 2012]; 2015, Oct. 1, P.L. 172, No. 40, § 2, effective in 60 days [Nov. 30, 2015]; 2018, May 4, P.L. 112, No. 21, § 2, effective in 60 days [July 3, 2018]; 2020, June 5, P.L. 246, No. 32, § 3, effective in 60 days [Aug. 4, 2020]; 2021, June 30, P.L. 197, No. 38, § 1, effective in 60 days [Aug. 30, 2021]; 2024, April 15, P.L. 24, No. 8, § 3, effective in 120 days [Aug. 13, 2024].

[Notes of Decisions \(13\)](#)

Footnotes

1 [35 P.S. § 780-113](#).

23 Pa.C.S.A. § 5329, PA ST 23 Pa.C.S.A. § 5329

Current through Act 38 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

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