

## **Significant Changes to PA Custody Law**

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A new Custody Act has been enacted that changes the way Pennsylvania courts decide child custody disputes. Passed into law on November 23, 2010, the new Custody Act governs custody proceedings filed after January 24, 2011. Custody proceedings commenced before the effective date will still be governed under the former custody statutes and prior case law.

Many changes were made to the way custody disputes are addressed in Pennsylvania. Below are a few significant changes made under the Act.

### **Factors Considered by the Court**

Before the new Custody Act, most of the factors considered by a court in awarding custody were stated in prior case law. Under the new Custody Act, a court is required to consider sixteen factors and give weight to factors which affect the safety of the child. Some of the factors include which party is likely to encourage contact with the other party and the history of drug or alcohol abuse of a party or a member of a party's household.

### **Effect of Criminal Record**

Under the former Custody Act, there were two separate lists of criminal offenses. If a parent was convicted, pled guilty or no contest to an offense in the first list, the court was required to appoint a professional to provide counseling to the offending parent. If a parent was charged with an offense listed in the second list, the court was not required to appoint a counseling professional, but was required to take the offense into consideration.

Under the new Custody Act, there is only one list of criminal offenses, and the list applies not only to parents, but to any party to the action and all members of a party's household. When a party or a household member has been convicted, pled guilty or no contest to an offense, the court must provide for an evaluation to determine if there is a threat to the child. Based on the evaluation, a court may order additional counseling if necessary. If a party or household member is charged with an offense, the opposing party may file for temporary custody, and the court is required to hold an expedited hearing to consider whether there is a risk of harm to the child.

The new Custody Act added several offenses that were previously not listed. Notable new offenses include terroristic threats, driving under the influence and certain drug related offenses.

### **Presumption in Favor of Parent**

The new Custody Act clarified that there shall be no presumption that custody should be awarded to a particular parent. However, when there is a dispute between a parent and third party, the new Custody Act creates a presumption that custody shall be awarded to the parent and such a presumption can only be rebutted by clear and convincing evidence.

## Parenting Plan

The new Custody Act states that courts MAY require litigants to file a Parenting Plan.

A Parenting Plan requires the parties to discuss basic elements of the child's schedule, such as holidays, routine schedule, and vacation. Additionally the parties discuss matters including diet, sports and activities, type of discipline, choice of school and religion.

## Relocation

Under the former Custody Act, if there was a dispute regarding a custodial parent's relocation with a child, the relocating parent was required to file either a complaint or a petition for modification. The relocating parent would be required to meet the three factors of the 1990 case *Gruber v. Gruber*.

The new Custody Act changes the procedure and the factors required for a parent to relocate with a child. Procedurally, the relocating parent must provide notice to every individual who has custody rights of the child. After notice is given, the non-relocating party is given the opportunity to object to the relocation and seek a temporary or permanent order preventing the move.

A significant change from the old Custody Act to the new Custody Act are the factors considered by the court in making the relocation determination. Formerly, the court followed the three factors listed in *Gruber v. Gruber*. Under the new Custody Act, the court will now consider ten factors to determine whether a parent is permitted to relocate outside of the jurisdiction.

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