

No. 1990-51

AN ACT

HB 1781

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for custody and visitation in certain cases.

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

Section 1. Section 5303 of Title 23 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5303. Award of [sole] custody, *partial custody or visitation*.

(a) *General rule.*—In making an order for custody, *partial custody or visitation* to either parent [individually], 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. [The court shall award sole custody when it is in the best interest of the child.] *In addition, 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 under the act of October 7, 1976 (P.L.1090, No.218), known as the Protection From Abuse Act.*

(b) *Consideration of criminal conviction.*—*If a parent has been convicted of or has pleaded guilty or no contest to an offense as set forth below, the court shall consider such criminal conduct and shall determine that the parent does not pose a threat of harm to the child before making an order of custody, partial custody or visitation to that parent:*

- (1) *18 Pa. C.S. Ch. 25 (relating to criminal homicide);*
- (2) *18 Pa. C.S. § 2901 (relating to kidnapping);*
- (3) *18 Pa. C.S. § 2902 (relating to unlawful restraint);*
- (4) *18 Pa. C.S. § 3121 (relating to rape);*
- (5) *18 Pa. C.S. § 3122 (relating to statutory rape);*
- (6) *18 Pa. C.S. § 3123 (relating to involuntary deviate sexual intercourse);*
- (7) *18 Pa. C.S. § 3126 (relating to indecent assault);*
- (8) *18 Pa. C.S. § 4302 (relating to incest);*
- (9) *18 Pa. C.S. § 4304 (relating to endangering welfare of children);*
- (10) *18 Pa. C.S. § 5902(b) (relating to prostitution and related offenses); or*
- (11) *18 Pa. C.S. § 6312 (relating to sexual abuse of children).*

(c) *Counseling.*—*In making a determination to award custody, partial custody or visitation pursuant to subsection (b), the court shall appoint a qualified professional to provide counseling to an offending parent described in subsection (b) and shall take testimony from that professional regarding the provision of such counseling prior to issuing any order of custody, partial*

custody or visitation. Counseling, required in accordance with this subsection, 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. If the court awards custody, partial custody or visitation to an offending parent described in subsection (b), the court may require subsequent periodic counseling and reports on the rehabilitation of the offending parent and the well-being of the child following an order relating to custody, partial custody or visitation. If, upon review of a subsequent report or reports, the court determines that the offending parent poses a threat of harm to the child, the court may schedule a hearing and modify the order of custody or visitation to protect the well-being of the child.

(d) Sole custody.—The court shall award sole custody when it is in the best interest of the child.

Section 2. This act shall apply to actions under 23 Pa.C.S. Ch. 53 (relating to custody) which are commenced on or after the effective date of this act regardless of when the abuse or offense took place.

Section 3. This act shall take effect in 60 days.

APPROVED—The 13th day of June, A. D. 1990.

ROBERT P. CASEY