

No. 1981-115

## AN ACT

SB 124

Providing for the sole or shared custody of children; providing access to records to both parents and providing for the right of grandparents to visit grandchildren in certain cases.

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

**Section 1. Short title.**

This act shall be known and may be cited as the "Custody and Grandparents Visitation Act."

**Section 2. Policy and purpose.**

The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child or children, to assure a reasonable and continuing contact of such child or children with both parents after a separation or dissolution of marriage, and the sharing of the rights and responsibilities of child rearing by both parents.

**Section 3. Definitions.**

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Child." Any unemancipated person who is under the age of 18.

"Legal custody." The legal right to make major decisions affecting the best interests of a minor child, including but not limited to, medical, religious and educational decisions.

"Physical custody." The actual physical possession and control of a child.

"Shared custody." An order awarding shared legal or shared physical custody or both of a child in such a way as to assure the child or children of frequent and continuing contact, including physical access, to both parents.

**Section 4. Award of sole custody.**

In making an order for custody 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 including physical access between the noncustodial parent and the child or children. The court shall issue sole custody when it is in the best interests of the child or children.

**Section 5. Award of shared custody.**

An order for shared custody may be awarded by the court when it is in the best interests of the child or children and:

- (1) upon application of one or both parents;

- (2) when the parties have agreed to an award of shared custody; or
- (3) in the discretion of the court.

**Section 6. Counseling.**

(a) The court may require the parents to attend counseling sessions and may consider the recommendations of the counselors prior to awarding sole or shared custody. These counseling sessions may include but shall not be limited to discussions of the responsibilities and decision making arrangements involved in both sole and shared custody and the suitability of each arrangement to each or both parent's capabilities.

(b) The court may temporarily award custody to either parent or both parents, pending resolution of any counseling.

(c) The court may require the counselor to submit a report if the court desires, in such reasonable time as the court may fix.

**Section 7. Submission of plan by parents.**

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of any custody order made pursuant to the provisions of this act. Upon the request of either parent or the court, the local Domestic Relations Office or other party or agency approved by the court shall assist in the formulation and implementation of the plan.

**Section 8. Court denial of award or plan.**

When the court declines to enter an order awarding custody either as agreed to by the parents or under the plan developed by the parents, pursuant to this act, the court shall state its reasons for denial on the record.

**Section 9. Removal from jurisdiction.**

If either party intends to or does remove himself or herself or the child or children from the Commonwealth after a custody order has been made, then the court, on its own motion, or either party may request a review of the existing custody order.

**Section 10. Access to records.**

(a) Except as provided in subsections (b) and (c), each parent shall be provided all access to the medical, dental, religious or school records of their child or children, the residence address of their child or children and of the other parent, and any other information that the court deems necessary.

(b) The court, in its discretion, may determine not to release any part or parts of the information in this section but in doing so must state its reason for denial on the record.

(c) The court shall not order that the address of a shelter for battered spouses and their dependent children or otherwise confidential records of a domestic violence counselor be disclosed to the defendant or his counsel or any party to the proceedings.

**Section 11. Modification of existing custody orders.**

Any order for the custody of the child or children of a marriage entered by a court in this Commonwealth or any state may, subject to the jurisdictional requirements set forth in 42 Pa.C.S. §§ 5342 (relating to purposes and construction of subchapter) and 5344 (relating to jurisdic-

tion) be modified at any time to an order of shared custody in accordance with the provisions of this section.

**Section 12. When parent is deceased.**

If a parent of an unmarried child is deceased, the parents or grandparents of the deceased parent may be granted reasonable visitation rights to the unmarried child by the court upon a finding that visitation rights would be in the best interests of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.

**Section 13. When parents' marriage is dissolved.**

In all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter, the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried child, after dissolution of marriage, if it finds that visitation rights would be in the best interest of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

**Section 14. When the child has resided with grandparents.**

If an unmarried child has resided with his grandparents or great-grandparents for a period of 12 months or more, and is subsequently removed from the home by his parents, the grandparents or great-grandparents may petition the court for an order granting them reasonable visitation rights to the child. The court shall grant the petition if it finds that visitation rights would be in the best interest of the child and would not interfere with the parent-child relationship.

**Section 15. Exception for adopted children.**

Sections 11, 12, 13 and 14 of this act shall not apply if the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption.

**Section 16. Effective date.**

This act shall take effect in 60 days.

APPROVED—The 5th day of November, A. D. 1981.

DICK THORNBURGH