

No. 1996-119

AN ACT

SB 1431

Amending Titles 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for costs and fees; providing for the establishment of a criminal charge information system for parties in child custody matters; and further providing for an award of custody, partial custody or visitation.

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 by adding a subsection to read:

§ 5303. Award of custody, partial custody or visitation.

* * *

(b.1) Consideration of criminal charge.—

(1) A parent who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) of the charge filed against the other parent for an offense listed in paragraph (2) may move for a temporary custody order or to modify an existing custody, partial custody or visitation order. The temporary custody or modification hearing shall be scheduled expeditiously.

(2) In evaluating any request for temporary custody or modification of a custody, partial custody or visitation order, the court shall consider whether the parent who is or has been charged with an offense listed below poses a risk of harm to the child:

- (i) 18 Pa.C.S. Ch. 25;***
- (ii) 18 Pa.C.S. § 2702 (relating to aggravated assault);***
- (iii) 18 Pa.C.S. § 2706 (relating to terroristic threats);***
- (iv) 18 Pa.C.S. § 2709(b) (relating to harassment and stalking);***
- (v) 18 Pa.C.S. § 2901;***
- (vi) 18 Pa.C.S. § 2902;***
- (vii) 18 Pa.C.S. § 2903 (relating to false imprisonment);***
- (viii) 18 Pa.C.S. § 3121;***
- (ix) 18 Pa.C.S. § 3122.1;***
- (x) 18 Pa.C.S. § 3123;***
- (xi) 18 Pa.C.S. § 3124.1;***
- (xii) 18 Pa.C.S. § 3125;***
- (xiii) 18 Pa.C.S. § 3126;***
- (xiv) 18 Pa.C.S. § 3127;***
- (xv) 18 Pa.C.S. § 3301 (relating to arson and related offenses);***

- (xvi) 18 Pa.C.S. § 4302;*
- (xvii) 18 Pa.C.S. § 4304;*
- (xviii) 18 Pa.C.S. § 6312; and*
- (xix) 23 Pa.C.S. § 6114 (relating to contempt for violation of order or agreement).*

(3) Failure to apply for information under 42 Pa.C.S. § 1904 or to act under this subsection shall not prejudice any parent in a custody or visitation proceeding.

* * *

Section 2. Section 1725(c)(2)(v) of Title 42 is amended to read:

§ 1725. Establishment of fees and charges.

* * *

(c) Counties of the first class.—

* * *

(2) The fees to be received by the Prothonotary of the Trial Division of the Court of Common Pleas and as clerk of the Family Division of said court in counties of the first class shall be as follows:

* * *

(v) Custody:

Custody, partial custody or visitation	[\$25.00] \$30.00
Respondent's first responsive filing	15.00
Other motions and petitions - (See petitions and motions)	

Thirteen percent of the funds generated by the charge under this subparagraph shall be transmitted by the prothonotary to the Administrative Office to pay for the implementation of section 1904 (relating to availability of criminal charge information in child custody proceedings).

* * *

Section 3. Section 1725.1 of Title 42 is amended by adding a subsection to read:

§ 1725.1. Costs.

* * *

(a.1) Custody cases.—Except as provided in section 1725(c)(2)(v) (relating to establishment of fees and charges) and subject to subsection (f), in a custody case, the court of common pleas shall, in addition to the cost provided by general rule, assess a cost of \$5.00. Eighty percent of the funds generated by the charge under this subsection shall be transmitted by the prothonotary to the Administrative Office to pay for the implementation of section 1904 (relating to availability of criminal charge information in child custody proceedings).

* * *

Section 4. Title 42 is amended by adding a section to read:

§ 1904. *Availability of criminal charge information in child custody proceedings.*

(a) Establishment of criminal charge information system.—The Administrative Office shall establish and maintain an information system to enable a parent who is a party to a custody proceeding or order to have access to information about the criminal charges filed against the other parent to the custody proceeding or order. The criminal charge information that shall be available for access under this section is limited to the information requested by those parents involved in a custody proceeding or order and for which an application has been filed and verified for access as provided for in this section.

(b) Criminal charges enumerated.—The criminal charge information that shall be available on the information system shall be limited to the offenses listed in 23 Pa.C.S. § 5303(b.1)(2) (relating to award of custody, partial custody or visitation).

(c) Application for access to criminal charge information.—To obtain information about charges covered in 23 Pa.C.S. § 5303(b.1)(2), a parent who has been awarded custody, partial custody or visitation or who is a party to a custody proceeding must file an application for access to the information with the office of the prothonotary in the county where the proceeding or order was filed.

(1) A person who knowingly gives false information with the intent to gain information provided for under this section commits an offense under 18 Pa.C.S. § 4904(a) (relating to unsworn falsification to authorities).

(2) The application must be filed with the prothonotary by one of the following methods:

(i) In person, at the office of the prothonotary, by the parent who is filing the application. The applicant must have a valid form of photoidentification available for the inspection of the prothonotary.

(ii) By mailing a notarized application using first class mail.

(iii) By including the application with the original complaint, initial response or any other pleading or motion filed with the prothonotary.

(3) The Administrative Office shall develop the application for access to the criminal charge information system. The following information shall be included in the application:

(i) Docket number of original court filing.

(ii) Date of filing.

(iii) Date of birth of all children involved in the custody proceeding or order.

(iv) A personal access code.

(v) A notice to the parent that additional information relating to criminal history record information is available, as provided for in 18 Pa.C.S. Ch. 91 (relating to criminal history record information).

(vi) A statement verifying that:

(A) *the person who is filing for access to the criminal charge information system is the actual person listed on the application;*

(B) *to the best of the applicant's knowledge and belief, all the information included in the application is true and correct; and*

(C) *the applicant is a party to the custody proceeding or order that is listed on the application.*

(vii) *A warning as to the penalty under 18 Pa.C.S. § 4904.*

(viii) *Any additional information that it is determined to be necessary to expedite the verification of the application and to provide access to the system, as determined by the Administrative Office.*

(4) *Applications shall be made available through county prothonotaries.*

(d) *Verification of application.—The prothonotary shall verify and transmit the application to the Administrative Office within six business days.*

(1) *Verification consists of checking court records to determine whether there exists an active custody proceeding or valid custody order remaining in effect.*

(2) *The Administrative Office shall determine how the application is to be transmitted.*

(e) *Access.—*

(1) *Except as provided in this subsection, the charge information system shall be accessible by telephone during regular business hours to parents who have filed a verified application and have been entered into the system. Information relating to the regular business hours of the Administrative Office shall be included with the application.*

(2) *The Administrative Office may interrupt the system for necessary maintenance, the processing and updating of information and the removal of names upon the termination of a custody order.*

(3) *Personal access codes shall remain valid until the youngest child involved in the custody proceeding or order reaches the age of 18.*

(f) *Time for providing access.—The Administrative Office shall provide for access to the criminal charge information system for each qualified individual within one business day of its receipt of the application. Access to the criminal charge information system shall be provided by a telephone service which requires an established fee to be paid by the caller at a cost not to exceed 50¢ per minute.*

(g) *Funds generated.—Funds transmitted to the Administrative Office under sections 1725(c)(2) (relating to establishment of fees and charges) and 1725.1(a.1) (relating to costs) for the implementation of this section and telephone tolls collected under subsection (f) shall be utilized in the following order of priority:*

(1) *To annually operate the system under this section.*

(2) *To build a surplus fund of \$50,000 to deal with emergencies and computer upgrading in the operation of the system under this section.*

(3) *To repay to the General Fund appropriations made to operate the system under this section.*

(4) *To the General Fund for use under section 2333(b) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.*

(h) Information available to parent.—

(1) *After applying and qualifying to obtain the criminal charge information provided by the system, a parent may request information by telephone as to whether the other parent has been charged with any offense listed in 23 Pa.C.S. § 5303(b.1)(2).*

(2) *The parent shall also be entitled to criminal history record information as provided for in 18 Pa.C.S. Ch. 91, and the parent shall be informed of the availability.*

(3) *Criminal charge information shall be retained on the system for the period of time as provided for the retention of criminal charges and records under 18 Pa.C.S. Ch. 91 and then only until the youngest child involved in the custody proceeding or order reaches 18 years of age. At no time shall information be retained on the system beyond what is permitted under 18 Pa.C.S. Ch. 91.*

(i) Information available to counsel and the court.—Information available under this act shall be available to counsel for either parent and to judges who are presiding over custody proceedings involving either parent.

(j) Imposition of cost prohibited.—No cost shall be assessed for applying for or acquiring information under this section, except:

(1) The cost of telephone toll charges shall be assessed.

(2) Costs shall be assessed as provided for in 18 Pa.C.S. Ch. 91.

(k) Disclosure restricted.—The contents of all applications and the inquiries made by all parents shall be confidential and shall only be disclosed as authorized in this section.

(l) Definition.—As used in this section, the term “parent” means a party to a custody proceeding who has been granted custody, partial custody or visitation with a child or who is a party to a custody proceeding.

Section 5. This act shall take effect in 120 days.

APPROVED—The 7th day of October, A.D. 1996.

THOMAS J. RIDGE