

## Comparison Chart: Child Custody

Issue	Code	Old Law	New Law	Description	Effective Date
<b>Factors to consider when awarding custody</b>	<b>§ 5328(a)</b> (2.1) of Title 23 <b>ADDED</b> by Act 107 of 2013	<b>NA</b>	(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following: (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child (2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services)	<ul style="list-style-type: none"> <li>• Added a provision to require court to consider information in 5329.1 relating to child abuse and involvement with protective services</li> </ul>	Act 107 of 2013 effective 1/1/2014
<b>Consideration of child abuse and involvement with protective services</b>	<b>§ 5329.1</b> of Title 23 <b>ADDED</b> by Act 107 of 2013	<b>NA</b>	(a) Information sharing.--In accordance with section 6340(a)(5.1) (relating to release of information in confidential reports), where a party seeks any form of custody, subject to the examination of the parties, the court shall determine: (1) With respect to child abuse under Chapter 63 (relating to child protective services) or a child who is a victim of a crime under 18 Pa.C.S. (relating to crimes and offenses) which would constitute abuse under Chapter 63: (i) Whether the child is the subject of an indicated or founded report of child abuse (ii) Whether a party or a member of	<ul style="list-style-type: none"> <li>• Enumerated the information the court is to consider in the determination of a custody matter to include the following:                             <ul style="list-style-type: none"> <li>• In respect to child abuse:                                     <ul style="list-style-type: none"> <li>○ Whether the child is the subject of an indicated or founded report of child abuse;</li> <li>○ Whether a party or a member of the party's household has been identified</li> </ul> </li> </ul> </li> </ul>	Act 107 of 2013 effective 1/1/2014

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			<p>the party's household has been identified as the perpetrator in an indicated or founded report of child abuse</p> <p>(iii) The date and circumstances of the child abuse</p> <p>(iv) The jurisdiction where the child abuse investigation took place</p> <p>(2) With respect to child protective services or general protective services under Chapter 63:</p> <p>(i) Whether a party or a member of a party's household has been provided services</p> <p>(ii) The type of services provided</p> <p>(iii) The circumstances surrounding the provision of services</p> <p>(iv) The status of services</p> <p>(v) The date the services were provided</p> <p>(vi) The jurisdiction where the services were provided</p> <p>(b) Cooperation.--The following apply:</p> <p>(1) The Department of Human Services and the county children and youth social service agency shall fully cooperate with the court and assist the court in fulfilling its duties under this section.</p> <p>(2) The Department of Human Services and the county children and youth social service agency shall fully cooperate with the governing authority in order to implement the</p>	<p>as the perpetrator in an indicated or founded report of child abuse;</p> <ul style="list-style-type: none"> <li>○ The date and circumstances of the child abuse; and</li> <li>○ The jurisdiction where the child abuse took place</li> </ul> <ul style="list-style-type: none"> <li>● In respect to child protective services or general protective services: <ul style="list-style-type: none"> <li>○ Whether a party of a member of the party's household was provided services;</li> <li>○ The type of services provided;</li> <li>○ The circumstances surrounding the provision of services;</li> <li>○ The status of services;</li> <li>○ The date services were provided; and</li> <li>○ The jurisdiction where services were provided.</li> </ul> </li> <li>● Requires the cooperation of the</li> </ul>	

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			<p>provisions of this section.</p> <p>(3) The governing authority shall develop procedures to implement the provisions of this section.</p> <p>(4) As used in this subsection, the term "governing authority" shall have the meaning given to it in 42 Pa. C.S. § 102 (relating to definitions).</p>	<p>department and county children and youth agencies to assist the courts in fulfilling their duties under this section</p>	
<b>Confidentiality of reports</b>	<b>§ 6339</b> of Title 23 <b>AMENDED</b> by Act 29 of 2014 and by Act 153 of 2014	Except as otherwise provided in this subchapter, reports made pursuant to this chapter, including, but not limited to, report summaries of child abuse and written reports made pursuant to section 6313(b) and (c) (relating to reporting procedure), as well as any other information obtained, reports written or photographs or X-rays taken concerning alleged instances of child abuse in the possession of the department or a county agency shall be confidential. Suspension by Court Rule. Section 6339 was suspended by Pennsylvania Rule of Juvenile Court Procedure No. 1800(9), adopted August 21, 2006, insofar as it is inconsistent with Rule	Except as otherwise provided in this subchapter or by the Pennsylvania Rules of Juvenile Court Procedure, reports made pursuant to this chapter, including, but not limited to, report summaries of child abuse and reports made pursuant to section 6313 (relating to reporting procedure), as well as any other information obtained, reports written or photographs or X-rays taken concerning alleged instances of child abuse in the possession of the department or a county agency shall be confidential	<ul style="list-style-type: none"> <li>• Minor revision deleting reference to 6313 (b) and (c)</li> <li>• Includes the Pennsylvania Rules of Juvenile Court Procedure</li> </ul>	<p>Act 29 of 2014 effective 12/31/2014</p> <p>Act 153 of 2014 effective 12/31/2014</p>

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		1340(B)(1)(e), which provides for the disclosure of reports if the reports are going to be used as evidence in a hearing to prove dependency of a child.			
<b>Release of information in confidential reports</b>	<b>§ 6340 (a) (5.1)</b> of Title 23 <b>AMENDED</b> by Act 107 of 2013 and Act 29 of 2014 and by Act 153 of 2014	(a) General rule.--Reports specified in section 6339 (relating to confidentiality of reports) shall only be made available to:  (5.1) A court of common pleas in connection with any matter involving custody of a child. The department shall provide to the court any reports and files which the court considers relevant.  (9) Law enforcement officials of any jurisdiction, as long as the information is relevant in the course of investigating cases of:  (i) Homicide or criminal offense set forth in section 6344(c) (relating to information	(a) General rule.--Reports specified in section 6339 (relating to confidentiality of reports) shall only be made available to: (5.1) A court of common pleas in connection with any matter involving custody of a child as set forth in sections 5328 (relating to factors to consider when awarding custody) and 5329.1 (relating to consideration of child abuse and involvement with protective services).  (9) Law enforcement officials of any jurisdiction, as long as the information is relevant in the course of investigating cases of: (i) Homicide or other criminal offense set forth in section 6344(c) (relating to employees having contact with children; adoption and foster parents), sexual abuse or exploitation, bodily injury or serious bodily injury caused by a perpetrator or nonperpetrator.  (c) Protecting identity. –Except for reports under subsection (a)(9) and (10) and in response to a law enforcement official	<ul style="list-style-type: none"> <li>• Amended to align language with other statutory amendments and language</li> <li>• Reports must be made available to a court of common pleas in matters involving custody of a child as set forth in: <ul style="list-style-type: none"> <li>○ 5328 (relating to factors to consider when awarding custody)</li> <li>○ 5329.1 (relating to consideration of child abuse and involvement with protective services)</li> </ul> </li> <li>• See change to 6344(c) <ul style="list-style-type: none"> <li>○ The release of data by the department, county, institution, school, facility, or agency or designated agent of the person in charge that would identify the person who made a report of suspected child abuse or who cooperated in a subsequent</li> </ul> </li> </ul>	Act 107 of 2013 effective 1/1/2014  Act 29 of 2014 effective 12/31/2014  Act 153 of 2014 effective 12/31/2014

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		<p>relating to prospective child-care personnel), sexual abuse, sexual exploitation, serious bodily injury or serious physical injury perpetrated by persons whether or not related to the victim.</p> <p>(c) Protecting identity of person making report.-- Except for reports pursuant to subsection (a)(9) and (10), the release of data that would identify the person who made a report of suspected child abuse or the person who cooperated in a subsequent investigation is prohibited unless the secretary finds that the release will not be detrimental to the safety of that person. Law enforcement officials shall treat all reporting sources as confidential informants.</p>	<p>investigating allegations of false reports under 18 PA.C.S. §4906.1 (relating to false reports of child abuse), the release of data by the department, county, institution, school, facility, or agency or designated agent of the person in charge that would identify the person who made a report of suspected child abuse or who cooperated in a subsequent investigation is prohibited. Law enforcement officials shall treat all reporting sources as confidential informants.</p>	<p>investigation is prohibited</p>	

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Release of information in confidential reports	§ 6340 (a) (18) of Title 23 ADDED by Act 15 of 2015	NA	The Department of Auditor General in conjunction with the performances of the duties designated to the Office of Auditor General, except that the Auditor General may not remove identifiable reports of copies thereof from the department or county agency	<ul style="list-style-type: none"> <li>Added (18) to state that reports specified in section 6339 can be made available to the Department of Auditor General</li> </ul>	Act 15 of 2015 effective 7/1/15
Release of information in confidential reports	§ 6340 (a) (9)(v) of Title 23 ADDED by Act 115 of 2016	NA	Severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102)	<ul style="list-style-type: none"> <li>Added (9)(v) to include severe forms of trafficking in persons or sex trafficking</li> </ul>	Act 115 of 2016 effective 10/28/16
County agency requirements for general protective services	§ 6375(o) of Title 23 ADDED by Act 107 of 2013	NA	(o) Availability of information.--Information related to reports of a child in need of general protective services shall be available to individuals and entities to the extent they are authorized to receive information under section 6340 (relating to release of information in confidential reports).	<ul style="list-style-type: none"> <li>Added (o) to allow for information sharing by the department and the county children and youth agency on general protective service cases</li> </ul>	Act 107 of 2013 effective 1/1/2014
Inspection of court files and records	§ 6307 (a)(4.1) and (a)(6.5) of Title 42 ADDED by Act 107 of 2013	NA	<p>(a) General rule.--All files and records of the court in a proceeding under this chapter are open to inspection only by:</p> <p>(4.1) A court in determining custody, as provided in 23 Pa.C.S. §§ 5328 (relating to factors to consider when awarding custody) and 5329.1 (relating to consideration of child abuse and involvement with protective services).</p> <p>(6.5) The Department of Human Services for use in determining whether an individual named as the perpetrator of an indicated report of child abuse should be expunged</p>	<ul style="list-style-type: none"> <li>Amended the Juvenile Act to allow inspection of court files and records by: <ul style="list-style-type: none"> <li>A court determining custody</li> <li>The department when determining whether an individual named as a perpetrator should be expunged from the statewide database</li> </ul> </li> </ul>	Act 107 of 2013 effective 1/1/2014

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			from the Statewide database.		

Comparison Chart:  
Definitions Related to Child Custody

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<b>Accepted for Service</b>	<b>§6303(a)</b> of Title 23 is <b>NOT CHANGED</b>	Decide on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters)	<Same as old law>	<ul style="list-style-type: none"> <li>No change</li> </ul>	NA
<b>Child Protective Services</b>	<b>§6303(a)</b> of Title 23 is <b>NOT CHANGED</b>	Those services and activities provided by the Department of Public Welfare and each county agency for child abuse cases	Those services and activities provided by the Department and each county agency for child abuse cases	<ul style="list-style-type: none"> <li>Changed Department of Public Welfare to “the department”</li> </ul>	NA
<b>Founded report</b>	<b>§6303(a)</b> of Title 23 <b>AMENDED</b> by Act 108 of 2013 and Act 44 of 2014	A child abuse report made pursuant to this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of abuse	A child abuse report involving a perpetrator that is made pursuant to this chapter, if any of the following applies: (1) There has been a judicial adjudication based on a finding that a child who is a subject of the report has been abused and the adjudication involves the same factual circumstances involved in the allegation of child abuse. The judicial adjudication may include any of the following: (i) The entry of a plea of guilty or nolo contendere (ii) A finding of guilt to a criminal charge (iii) A finding of dependency under 42 Pa.C.S. § 6341 (relating to adjudication) if the court has entered a	<ul style="list-style-type: none"> <li>This section was reorganized and enumerated to clarify the conditions of a founded report</li> <li>Added three provisions that support a founded disposition: <ul style="list-style-type: none"> <li>Acceptance into an accelerated rehabilitative disposition program</li> <li>A consent decree entered in a juvenile proceeding, finding that a child who is the subject of the report has been abused by the child who is alleged to be delinquent</li> <li>A final protection from abuse order has been granted which must meet four conditions including: <ul style="list-style-type: none"> <li>Only one individual is charged with the</li> </ul> </li> </ul> </li> </ul>	Act 108 of 2013 effective 12/31/14  Act 44 of 2014 effective 12/31/14



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			<p>finding that a child who is the subject of the report has been abused</p> <p>(iv) (A finding of delinquency under 42 Pa.C.S. § 6341 if the court has entered a finding that the child who is the subject of the report has been abused by the child who was found to be delinquent</p> <p>(2) There has been an acceptance into an accelerated rehabilitative disposition program and the reason for the acceptance involves the same factual circumstances involved in the allegation of child abuse.</p> <p>(3) There has been a consent decree entered in a juvenile proceeding under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), the decree involves the same factual circumstances involved in the allegation of child abuse and the terms and conditions of the consent decree include an acknowledgment, admission or finding that a child who is the subject of the report has been abused by the child who is</p>	<p>abuse in the protection from abuse action;</p> <ul style="list-style-type: none"> <li>▪ Only that individual defends against the charge;</li> <li>▪ The adjudication involves the same factual circumstances involved in the allegation of child abuse; and</li> <li>▪ The protection from abuse adjudication finds that the child abuse occurred</li> </ul> <ul style="list-style-type: none"> <li>• Clarified that a judicial adjudication based on a finding that a child who is a subject of the report has been abused, includes: <ul style="list-style-type: none"> <li>○ Dependency</li> <li>○ Finding of delinquency</li> </ul> </li> </ul>	

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			<p>alleged to be delinquent.            (4) A final protection from abuse order has been granted under section 6108 (relating to relief), when the child who is a subject of the report is one of the individuals protected under the protection from abuse order and:</p> <ul style="list-style-type: none"> <li>(i) only one individual is charged with the abuse in the protection from abuse action;</li> <li>(ii) only that individual defends against the charge;</li> <li>(iii) the adjudication involves the same factual circumstances involved in the allegation of child abuse; and</li> <li>(iv) the protection from abuse adjudication finds that the child abuse occurred</li> </ul>		
<b>General Protective Services</b>	<b>§6303(a)</b> of Title 23 <b>AMENDED</b> by Act 44 of 2014	Those services and activities provided by each county agency for nonabuse cases requiring protective services, as defined by the Department of Public Welfare in regulations	Those services and activities provided by each county agency for cases requiring protective services, as defined by the department in regulations	<ul style="list-style-type: none"> <li>• Changed language from nonabuse cases to cases requiring protective services</li> </ul>	Act 44 of 2014 effective 12/31/14
<b>Indicated report</b>	<b>§6303(a)</b> of Title 23 <b>AMENDED</b> by	A child abuse report made pursuant to this chapter if an investigation by the county agency or the Department	(1) Subject to paragraphs (2) and (3), a report of child abuse made pursuant to this chapter if an investigation by the Department	<ul style="list-style-type: none"> <li>• Added provision for indicating a child abuse report regardless of the number of alleged</li> </ul>	Act 108 of 2013 effective

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	Act 108 of 2013	of Public Welfare determines that substantial evidence of the alleged abuse exists based on any of the following: (1) Available medical evidence (2) The child protective services investigation (3) An admission of the acts of abuse by the perpetrator	or county agency determines that substantial evidence of the alleged abuse by a perpetrator exists based on any of the following: (i) Available medical evidence (ii) The child protective service investigation (iii) An admission of the acts of abuse by the perpetrator (2) A report may be indicated under paragraph (1)(i) or (ii) for any child who is the victim of child abuse, regardless of the number of alleged perpetrators. (3) A report may be indicated under paragraph (1)(i) or (ii) listing the perpetrator as "unknown" if substantial evidence of abuse by a perpetrator exists, but the department or county agency is unable to identify the specific perpetrator.	perpetrators <ul style="list-style-type: none"> <li>• Added provision for indicating a child abuse report with an unknown perpetrator if: <ul style="list-style-type: none"> <li>○ There is substantial evidence of abuse by a perpetrator</li> <li>○ The county agency is unable to identify the specific perpetrator</li> <li>○ Multiple perpetrators</li> </ul> </li> <li>• Changed Department of Public Welfare to “the department”</li> </ul>	12/31/14
<b>Protective Services</b>	<b>§6303(a)</b> of Title 23 is <b>NOT CHANGED</b>	Those services and activities provided by the Department of Public Welfare and each county agency for children who are abused or are alleged to be in need of protection under this chapter	Those services and activities provided by the Department and each county agency for children who are abused or are alleged to be in need of protection under this chapter	<ul style="list-style-type: none"> <li>• Changed Department of Public Welfare to “the department”</li> </ul>	NA