

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1290 Session of 1989

INTRODUCED BY BORTNER, HAGARTY, YANDRISEVITS, McVERRY, JOHNSON, BROUJOS, MAINE, RITTER, MAIALE, HECKLER, PISTELLA, MERRY, TRELLO, NOYE, SEMMEL, OLIVER, MICHLOVIC, DeLUCA, MELIO, MORRIS, LEVDANSKY, BUNT, COLAIZZO, JAMES, SERAFINI AND KASUNIC, APRIL 24, 1989

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 24, 1989

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, further providing for legislative
3 intent; adding a definition; and further providing for
4 custody and visitation.
5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:
7 Section 1. Section 5301 of Title 23 of the Pennsylvania
8 Consolidated Statutes is amended to read:
9 § 5301. Declaration of policy.
10 The General Assembly declares that it is the public policy of
11 this Commonwealth, when in the best interest of the child, to
12 assure a reasonable and continuing contact of the child with
13 both parents after a separation or dissolution of the marriage
14 and the sharing of the rights and responsibilities of child
15 rearing by both parents and continuing contact of the child or
16 children with grandparents when a parent is deceased, divorced
17 or separated. The General Assembly also recognizes the

1 importance, when in the best interest of the child, of assuring
2 reasonable and continuing contact with the child's psychological
3 parent after disruption of the relationship has occurred.

4 Section 2. Section 5302 of Title 23 is amended by adding a
5 definition to read:

6 § 5302. Definitions.

7 The following words and phrases when used in this subchapter
8 shall have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 * * *

11 "Psychological parent." An individual:

12 (1) (i) who evidences genuine care and concern for the
13 child;

14 (ii) for whom the child evidences genuine care and
15 concern; and

16 (iii) whose relationship with the child began with
17 the consent of a parent of the child or pursuant to an
18 order of court; and

19 (2) (i) with whom the child, who was three years of age
20 or younger at the time of placement, resided for a
21 continuous period of at least 12 months and who, during
22 that time, provided for the physical, emotional and
23 social needs of the child; or

24 (ii) with whom the child, who was three years of age
25 or older at the time of placement, resided for a
26 continuous period of at least 24 months and who, during
27 that time, provided for the physical, emotional and
28 social needs of the child.

29 * * *

30 Section 3. Sections 5303, 5311, 5312 and 5313 of Title 23

1 are amended to read:

2 § 5303. Award of sole custody.

3 (a) General rule.--In making an order for custody to either
4 parent individually, the court shall consider, among other
5 factors, which parent is more likely to encourage, permit and
6 allow frequent and continuing contact and physical access
7 between the noncustodial parent and the child. The court shall
8 award sole custody when it is in the best interest of the child.

9 (b) Psychological parents.--A psychological parent has
10 standing to bring a petition for custody of a child. The court
11 shall award sole custody to the psychological parent when it is
12 in the best interest of the child. The court shall impose no
13 greater burden of proof upon a psychological parent than that
14 which is imposed upon a parent in a custody proceeding.

15 § 5311. When parent deceased.

16 If a parent of an unmarried child is deceased, the parents or
17 grandparents of the deceased parent or the psychological parent
18 of the child may be granted reasonable partial custody or
19 visitation rights, or both, to the unmarried child by the court
20 upon a finding that partial custody or visitation rights, or
21 both, would be in the best interest of the child and would not
22 interfere with the parent-child relationship. The court shall
23 consider the amount of personal contact between the [parents or]
24 grandparents [of the deceased parent], great-grandparents or
25 psychological parents and the child prior to the application.

26 § 5312. When parents' marriage is dissolved or parents are
27 separated.

28 In all proceedings for dissolution, subsequent to the
29 commencement of the proceeding and continuing thereafter or when
30 parents have been separated for six months or more, the court

1 may, upon application of the parent or grandparent of a party or
2 of a psychological parent of the child, grant reasonable partial
3 custody or visitation rights, or both, to the unmarried child if
4 it finds that visitation rights or partial custody, or both,
5 would be in the best interest of the child and would not
6 interfere with the parent-child relationship. The court shall
7 consider the amount of personal contact between the [parents or]
8 grandparents [of the party], great-grandparents or psychological
9 parents and the child prior to the application.

10 § 5313. When child has resided with grandparents.

11 If an unmarried child has resided with his grandparents [or],
12 great-grandparents or psychological parents for a period of 12
13 months or more and is subsequently removed from the home by his
14 parents, the grandparents [or], great-grandparents or
15 psychological parents may petition the court for an order
16 granting them reasonable partial custody or visitation rights,
17 or both, to the child. The court shall grant the petition if it
18 finds that visitation rights would be in the best interest of
19 the child and would not interfere with the parent-child
20 relationship.

21 Section 4. This act shall take effect in 60 days.

Handout #2 2



HOUSE OF REPRESENTATIVES
DEMOCRATIC COMMITTEE

BILL ANALYSIS

BILL NO. HB 1290 PN 1483 SPONSOR: Bortner
COMMITTEE: Judiciary DATE: 03/27/90 (EM)

PROPOSAL: To authorize, in appropriate cases, partial custody or visitation rights to a "psychological parent" of a child in circumstances where a real parent is deceased, or the real parents' marriage is dissolved or in a state of separation.

EXISTING LAW: §5311 of Title 23 of the Pennsylvania Consolidated Statutes provides that if a parent of an unmarried child is deceased, the parents or grandparents of the deceased parent may be granted reasonable partial custody or visitation rights, or both, upon a finding that such partial custody or visitation rights or both would be in the best interest of the child and would not interfere with the parent-child relationship with the live parent. 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. §5312 presently provides that in all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter or when parents have been separated for 6 months or more, the court may upon application of the parent or grandparent of a party, grant reasonable custody or visitation rights or both to an unmarried child if it finds that visitation rights or partial custody or both would be in the best interest of such child and would not interfere with the parent-child relationship. Again, the court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application. Finally, present §5313 provides that 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 such home by his parents, such grandparents or great-grandparents may petition the court for partial custody or visitation rights or both; 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.

HB 1290 provides that a "psychological parent" has standing to bring a petition for custody and that the court shall award sole custody to the psychological parent when it is in the best interest of the child. No greater burden of proof shall be imposed upon a psychological parent than that which is imposed upon a parent in a regular custody proceeding.

"Psychological parent" is defined as an individual who evidences genuine care and concern for the child, and for whom the child evidences genuine care and concern, and whose relationship with the child began with the consent of the parent of the child or pursuant to an order of court, and with whom the child, when 3 years of age or younger at the time of placement, resided continuously for at least 12 months and during which time such person provided for the physical, emotional and social needs of the child; or with whom the child, if 3 years of age or older at the time of placement, resided continuously for at least 24 months during which time the individual provided for the physical, emotional and social needs of the child.

Existing §5311 dealing with a deceased parent would be amended to add psychological parents to the parents or grandparents of the deceased parent as being persons eligible for partial custody or visitation rights under such section, and the same would be true with the amendment of existing §5312, dealing with the situation where the parents' marriage is dissolved or the parents are separated. §5313 would be amended by HB 1290 to say that if an unmarried child who has resided with his grandparents, great-grandparents or psychological parents for a period of 12 months or more, is subsequently removed from such home by his parents, then the grandparents, great-grandparents or psychological parents of such child may petition for reasonable partial custody or visitation rights or both under the circumstances presently permitted by §5313.