

HOUSE JUDICIARY COMMITTEE
TESTIMONY ON H.B. 2018 – CUSTODY FACTORS
HONORABLE DANIEL J. CLIFFORD
JUNE 18, 2024 PUBLIC HEARING
HARRISBURG, PENNSYLVANIA

Thank you for the opportunity to appear before the Committee today to discuss House Bill 2018.

By way of introduction, I am Judge Dan Clifford from the Montgomery County Court of Common Pleas.¹ I serve as the Administration Judge of the Family Division where 7 and one half Judges are assigned.

I am joined by my colleague Judge Tarah Toohil from the Luzerne County Court of Common Pleas. Judge Toohil was elected to the Bench in 2021, after serving in the House of Representatives for 11 years, which included service on this Committee.

We appear here today as part of the Family Court Section of the Pennsylvania Conference of State Trial Judges (PCSTJ). Pursuant to statute, there are 462 trial judges serving in Pennsylvania many of whom preside over family court matters in our 67 Counties.

Our prepared remarks are made in connection with our unique familiarity on the subject matter, about which we have acquired significant knowledge and expertise through the course of our many years of practice and service to the Commonwealth.

¹ Judge Clifford is a past Chair of the Supreme Court Rules Committee on Family Law. Prior to his election in 2015, he was a family lawyer for over 30 years, actively practicing in 12 counties, and served as Chair of the Family Law Section of the Pennsylvania Bar Association in 2014. During his year as Chair, Judge Clifford spearheaded the award-winning *Judicial Interview of the Child* video project and the legislative initiative that led to the adoption of Act 102 (signed into law by Governor Tom Wolf in October 2016).

The opinions expressed in our prepared remarks, and in response to any of your questions, are our own and do not reflect the views of the Supreme Court, the Court of Common Pleas of Montgomery and Luzerne County or the Administrative Office of Pennsylvania Courts.

The contents of House Bill 2018 were discussed at our most recent Section meeting, at the February PCSTJ conference, and the remarks to you are consistent with the opinions expressed from Judges across Pennsylvania present at that meeting.

In addition, the following Resolution was adopted at the Conference:

PSCTJ RESOLUTION

- The pending legislation contained in HB 2018 would have a positive impact on custody litigation before the judges in our Conference.
- The legislation is based on recommendations from the Joint State Government Commission Task Force on Domestic Relations Law and is directed towards increasing judicial efficiency in the administration of child custody cases.
- The Conference believes the topic of the custody Factors is a matter concerning the law and the administration of justice because Judges are required to address each Factor for any award of custody, in every child custody case, by specifically setting forth their reasoning either in writing or on the record.
- Jurist members of the Conference have acquired knowledge and expertise on these matters in the course of their judicial duties.

Preliminarily, we acknowledge, favorably, the sentiments that will be expressed by both the Joint State Government Commission and the Pennsylvania Bar Association.

Many of us involved in family court remember the days when a judge might issue a ten word Order following a custody hearing: “*primary custody to mother and every other weekend to father.*” That was it. The custody Factors, adopted in 2011 (instituted via collaboration with the Joint State Government Commission, the Bar and legislators), require every judge, in every custody case, to stop, think and fully explain every aspect of their custody decision.

Notably, there is no delineated priority to the list of the 16 factors. The custody Judge has the responsibility to first consider, and then weigh, each factor separately and to assign the amount of weight that each deserves within the context of the particular custody case before the Court.

The legislature’s Joint State Commission, Advisory Committee on Domestic Relations Law, on which I also serve, has been diligently working to “*refresh*” the Factors for the past 4 years. The Joint State Commission’s Recommendation relating to the Factors, conveyed to the legislative leadership in 2022, serves as the basis of House Bill 2018. Notably, the Commission’s Custody Sub-Committee also includes Judge Kim Eaton of Allegheny County and Judge Katherine Platt of Chester County; two prestigious and long-serving Family Court Judges.

By the way, I used the word “*refresh*” earlier as opposed to “revise” or “redraft”. While the existing Factors that are in place remain a solid framework upon which to require a judge to consider in making child custody decisions, after 12 years, it is appropriate to revisit them to ensure they remain current.

Incidentally, we acknowledge the recent changes to the Factors with the enactment of “Kayden’s Law”. Our purpose here is not to interpose with those changes but to turn instead to the other Factors which can be easily condensed or rephrased. These tweaks should be in no way

controversial at all. This really boils down to the kind of “in-the-weeds” policy making that is not glamorous or head line grabbing, but results in statutes that are more workable to all of the participants and are, as I like to say, “user friendly”.

I will leave it to others to go more in depth with the proposed changes, however I will offer the following observations:

1. The words “*education*”, “*stability*” and “*emotional needs*” currently appear in three different Factors:

Factor 4: *The need for stability and continuity in the child's education, family life and community life.*

Factor 9: Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

Factor 10: *Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.*

Family Court Judges have questioned whether it is necessary, and productive use of litigant time and judicial resources, to require the Court to repeatedly address the same issue in three separate Factors?

Under House Bill 2018, Factors 4, 9 and 10 are all combined into a single, new Factor that covers all three criteria.

2. **Factor 5** currently reads as follows: “*The availability of extended family*”.

What does that mean?

Does it mean we should know whether a parent is involving the child with their extended family? More to the point, are we supposed to find whether that is a positive or negative thing - given the particular dynamics that may be at play

with a parent's own extended family? Or, does it mean that there should be extended family available to provide child care? No one knows.

House Bill 2018 deletes Factor 5 and incorporates "other family" into Factor 6 as follows:

Factor 6: *"The child's sibling and other family relationships"*.

3. House Bill 2018 adds consideration of a parent's employment schedule.

Arguably, most Family Court Judges will tell you that this is often the single most important consideration when devising a custody schedule for the child and -- currently - it is not specifically stated in the Factors.

There are several other examples but I think you get the gist that we can surely make these Factors far more workable for everyone involved.

You may be asking yourself why this is so important; particularly to Judges.

In 2023, there were 41,557 new custody filings in Pennsylvania. This staggering number does not include many existing custody cases where filing petitions for modifications of an existing custody order in family court is systemic.²

We also cannot ignore the fact that many cases involve an urgent need of our attention, and Court time, due to issues of substance abuse, neglect or domestic violence.

Finally, I would be remiss if I failed to mention Act 102 this morning. This legislation originated in the House, in this Committee, and was enacted in October 2016.

² As an example, in Montgomery County, our filings increased by over 400 more cases since 2019 (from 4,061 to 4,442). During the same time period, there has also been an increase in over 300 Protection from Abuse filings (from 1,551 to 1,852). With the same complement of judges.

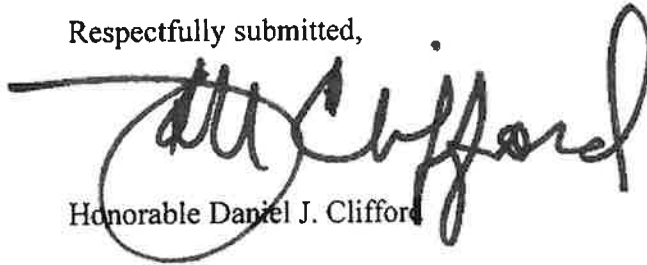
It remains the most significant revision to the Divorce Code in nearly 30 years. That legislation was initiated by the PBA Family Law Section when I was Chair. It was introduced by your former colleague, Judge Toohil. It passed both the House and the Senate with overwhelming majorities.

I mention this because it this type of collaboration which results in providing meaningful improvements to our family court system.

We respectfully request that you please create a working group for us to sit down and work collaboratively on these non-controversial edits to the Factors. Let's work on this together.

Thank you for the opportunity to present these remarks this morning.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Clifford". The signature is written in a cursive style with a large, sweeping initial "D" and a long horizontal stroke extending to the left.

Honorable Daniel J. Clifford