

HOUSE JUDICIARY COMMITTEE
PUBLIC HEARING ON HOUSE BILL 2018 – CUSTODY FACTORS
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HARRISBURG, PENNSYLVANIA

Good morning Chairmen Briggs and Kauffman and Members of the House Judiciary Committee. My name is Maria Cognetti and I am an attorney practicing primarily in the Central Pennsylvania area. I have practiced solely family law for the past 46 years, with a major emphasis on child custody.

Thank you for considering this very important aspect of the current Custody statute and for the opportunity to offer testimony today.

Today, I am testifying as a member of the Advisory Committee on Domestic Relations Law for the Joint State Government Commission, where I serve, and have served, for over twenty years, as the Chairperson of the Custody Subcommittee.

I have also served as the Chair of the Family Law Section of the Pennsylvania Bar Association, the Past President of the Pennsylvania Chapter of the American Academy of Matrimonial Lawyers, and as Past President of the American Academy of Matrimonial Lawyers.

In my role as Chair of the Custody Subcommittee of the Joint State Government Commission, I can attest to the fact that we spent an extremely large number of hours, days and months, if not years, on the topic before this body today. The members of my committee are, and have always been, dedicated to protecting the rights of children.

It may be helpful to know a little bit about who we are and what we do. As you are aware, the Joint State Government Commission is the primary non-partisan research organization that serves the Pennsylvania General Assembly.

The Advisory Committee on Domestic Relations Law, a subcommittee of the overall Joint State Commission, consists of approximately 24 members of lawyers, Judges and a law professor. Our members are both geographically diverse, from across all sections of Pennsylvania, and have achieved prominent reputations within our Commonwealth's family court community.

Preliminary to addressing the current legislation, a brief history of the Advisory Committee on Domestic Relations Law will be informative to members of your Committee.

Senate Resolution No. 43 of 1993 directed the Joint State Government Commission to undertake an ongoing limited study of certain areas relating to domestic relations law.

To accomplish this purpose, the Resolution created a legislative Task Force comprised of:

- the Majority and Minority Chairpersons of the House and Senate Judiciary Committees; and
- the Majority and Minority Chairpersons of the Senate Aging & Youth Committee and the House Children & Youth Committee .

To assist the Task Force, Senate Resolution 43 appointed the Advisory Committee to collaborate with the Joint State Government Commission on family law issues.

For over 25 years, the Advisory Committee has reviewed specific topics with the goal of developing statutory recommendations to the Domestic Relations Code to present to your legislative liaisons on the Task Force.

Many years ago my Subcommittee, at the direction of the Committee as a whole, took on the task of looking into revising the factors. This was done for many reasons. In coming up with

the revised “factors” before you today, our Custody Subcommittee had worked diligently on those revisions to the 16 custody factors set forth in 23 Pa.C.S. Section 53.28a. These factors were incorporated into the Custody Statute in 2011 and required that every judge presiding over a custody trial in Pennsylvania analyze these very specific factors. As you can see, the factors end with the 16th factor being a catch-all for any other relevant factor the court may deem appropriate. This was a herculean task, especially where new judges sitting in family court have little, if any, experience with these types of cases.

Consequently, the legislature’s Joint State Commission, Advisory Committee on Domestic Relations Law and specifically, the Custody Subcommittee, has been diligently working to “refresh” the Factors for more than 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, in addition to Judge Clifford who is testifying today, the Commission’s Custody Subcommittee also includes Judge Kim Eaton of Allegheny County and Judge Katherine Platt of Chester County; three very prestigious and long-serving Family Court Judges.)

As Judge Clifford points out in his testimony, although these factors have served the court and clients well for many years, it was time for a review. With many years under our collective belts, the subcommittee set out to clean up or “refresh” the factors. In essence, it was time to confirm that the factors were both “current” and appropriate.

When the subcommittee first started down the road to reviewing the factors, a group of committee members took on the task of doing a 50 state review. We were determined to see how our factors compared to those of the other 49 states. We sought to learn if there were other factors which we may have missed or if some of our factors should be combined into one. We also looked

to see if we needed to tweak any of our wording within the factors in order to bring them up to date with current parenting trends. This was a most comprehensive and time-consuming task but one worth the effort as much was learned.

The result of many years of research and review has led to what you have before you today. The original 16 factors are down to 10 (or 12 if you count the sub-parts). This section makes clear that there is no priority to the list of the revised factors. The presiding judge has the discretion to first consider, then weigh, each factor separately and to assign to each factor the amount of weight which the court determines that factor deserves within the context of the facts of the particular case before the court. This discretion is essential to the critical responsibility judges have in child custody cases. Although there is no prioritization to these factors, the fact that consideration of abuse is the second factor provides ample assurance that it is an extremely significant factor, and one which will be addressed with certainty by any judge before considering the remaining factors. A judge cannot simply overlook or leave any one factor blank.

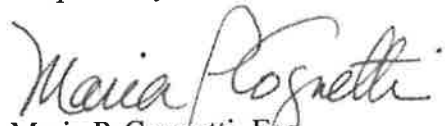
Again, as noted by Judge Clifford, we acknowledge the recent changes to the Factors with the enactment of “Kayden’s Law”. “Our purpose here is not to interpose with those changes but to turn instead to the other Factors which can be easily condensed or rephrased.” It is the hope of the Custody Subcommittee that these suggested tweaks or changes should be in no way controversial.

Since one of the stated purposes of the Joint State Government Commission Advisory Committee on Domestic Relations Law is to aid in the development of and drafting of appropriate Family Law Statutes, I can speak on behalf of my entire committee in stating that we welcome the opportunity to assist you in redrafting any provisions which would aid in having our factors work in tandem with the goal of Kayden’s Law.

On behalf of the Joint State Government Commission Advisory Committee on Domestic Relations Law I respectfully request that you create a working group with us to sit down and work collaboratively on these non-controversial edits to the Factors. We look forward to working together with you on this most important task.

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

Respectfully submitted,



Maria P. Cognetti, Esq.