



Your Other Partner

**TESTIMONY OF HILLARY J. MOONAY, ESQUIRE AND DARREN J. HOLST,
ESQUIRE ON BEHALF OF THE PENNSYLVANIA BAR ASSOCIATION
PUBLIC HEARING BEFORE THE HOUSE JUDICIARY COMMITTEE
H.B. 2018 – CUSTODY FACTORS
JUNE 18, 2024**

Good morning, Chairman Briggs, Chairman Kauffman, and Members of the House Judiciary Committee. Thank you for considering the critically important issues surrounding custody of children of this Commonwealth and for the opportunity to offer testimony today. I am Hillary Moonay, Chair of the Family Law Section of the Pennsylvania Bar Association. I also currently serve as the Co-Chair of the Family Law Section of Bucks County Bar Association and am a Fellow of the American Academy of Matrimonial Lawyers. I am joined by Darren Holst who is the Immediate Past Chair of our Section, an Academy Fellow, and a Fellow of the International Academy of Family Lawyers. We are testifying today on behalf of the Pennsylvania Bar Association, which has over 20,000 members and represents attorneys from all 67 counties in the Commonwealth. The Family Law Section of our Bar Association has almost 900 members and I am honored to serve as the Chair of this incredibly important and active Section.

The PBA strongly supports HB 2018. On March 12, 2024, the Family Law Section of the PBA issued a Report and Recommendation regarding HB 2018 requesting the Bar Association to support the Bill. This Recommendation was approved by the 26 members of the PBA Board of Governors and subsequently by the 316 voting members of the PBA House of Delegates.



As family law attorneys, Darren and I handle child custody cases routinely in our practice. We see our custody laws in action every day – the good and the bad. Our current Custody Act, which became law in 2011, is a result of hard work and the collaboration of the Joint State Government Commission, Bar Associations, and legislators like you, among others. And, that is exactly what we are asking for here requesting with regard to HB 2018 – the opportunity to work together to improve the effectiveness and efficiency of custody cases for attorneys, judges and, most importantly, the litigants and their children.

Currently, Section 5328 of the Domestic Relations Code requires the Court to consider 16 different factors when determining any form of custody. HB 2018 proposes to decrease those factors from 16 to 12. You may wonder why. I would suggest that the Bill does not seek to eliminate any of the factors that a court must consider in any custody matter. Instead, the Bill consolidates some of the factors that contain overlapping and redundant terms and clarifies and adds context to others. By way of example, the terms “education,” “emotional needs,” and “stability” each appear twice in separate factors. Synthesizing and consolidating duplicative factors will increase judicial efficiency in the administration of child custody cases.

Let’s consider why a more streamlined set of factors makes sense in a custody case. At the outset of a custody case, many counties require litigants to submit pre-hearing statements. This requires each party and their attorney to consider, analyze and present evidence to support why each factor is relevant, material to that particular case and supports that party’s position regarding custody. This type of analysis must be provided for each of the 16 factors. Many



times, this means repeating the same statement over and over, trying to find new evidence that supports a different – yet substantially similar – factor.

Next, the custody case moves to hearing. At that time, during witness testimony, each factor must be addressed again. Questioning of witnesses must be painstakingly detailed to ensure that there is evidentiary support for each of the factors in a parent's favor. At times, this may mean the witness having to repeat how he or she meets the child's emotional needs, for example, several times. Finally, when the Judge renders a custody decision, the Judge must discuss each of the 16 factors and outline why each factor leans in favor of one party, the other party or is neutral. Often these decisions are given on the record, requiring the parties to return to court, after the conclusion of a hearing, adding both additional time and cost to pursuing or defending a custody case.

Consolidating the factors as proposed in HB 2018 makes them more streamlined and simplified. In turn, this will increase judicial efficiency in the administration of child custody matters and serve to decrease the backlog of family court cases. Reducing the custody factors would have a positive impact on custody litigation for litigants, attorneys, and judges by providing a more manageable list of factors. Such consolidation would allow for more consistency and clarity in rulings, promoting fairness in these cases. By streamlining the custody factors, the time and resources required for custody litigation would decrease, therefore reducing the cost. Importantly, the legal process would be more accessible and less of a financial burden to families, ensuring that the focus remains on the child's best interests rather than on procedural complexities.



Acknowledging the recent enactment of Kayden’s Law (Act 8 of 2024), we would submit that the proposed changes to the custody factors considered by HB 2018 do not interfere with the standards set forth in Act 8. Specifically, the language of the current statute can be harmonized in such a way that, HB 2018 will compliment Kayden’s Law and will in no way neuter its effectiveness.

Collaboration between The Pennsylvania Bar Association and the General Assembly has repeatedly resulted in improvements to laws that serve the families of our Commonwealth. As a recent example, the passage of Act 12 of 2023 – The Pennsylvania Family Law Uniform Arbitration Act – was achieved after four years of working together to improve the options available for families. We respectfully request the opportunity to similarly work with you to revisit the custody factors to provide a more concise roadmap in custody cases across the Commonwealth.

We thank you for the opportunity to share this testimony this morning.