

2018 Legislative Highlights

SWAN Legal Services Initiative

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Office of Children, Youth and Family 2018 Bulletins

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STATE LEGISLATION

Act 10 of 2018, signed by the Governor February 21, 2018

Effective: Immediately

Titled: An Act amending Titles 18 (Crimes and Offenses), 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in sexual offenses (abbreviated title)

Summary: Pennsylvania Act 10 of 2018 (formerly House Bill 631) was enacted to add new registration requirements to the sentencing laws. (42 Pa.C.S.A. §9799.53 & 42 Pa.C.S.A. §9799.55). This addition will require people who were convicted of sexually violent offenses, or who were required to register as a sexual offender on or after April 22, 1996, but before December 20, 2012, to register with the PA State Police for a period of ten years or for the rest of their lives, depending upon the crime that was committed. This law also amends the grounds for involuntary termination of parental rights and amends the definition of “child abuse” in the CPSL. Other changes include amendments to the sections of the CPSL relating to the expungement of information of perpetrators who are under 18, and the definition of “sexually violent delinquent child.”

- Amends grounds for involuntary termination of parental rights in 23 Pa. C.S.A. § 2511(a) (11), which now states, “The parent is required to register as a sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders) **or I (relating to continued registration of sexual offenders)** or to register with a sexual offender registry in another jurisdiction or foreign country.”
- Amends the definition of “child abuse” in the CPSL at 23 Pa. C.S.A. 6303(B.1)(8)(VII)(D), adding:
 - (b.1) Child abuse.--The term "child abuse" shall mean intentionally, knowingly or recklessly doing any of the following:
 - ***
 - (8) Engaging in any of the following recent acts:
 - ***
 - (vii) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:
 - ***
 - (D) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).**
- Amends the sections of the CPSL relating to the expungement of information related to perpetrators under 18 by adding crimes that expungement does not apply to. (See 23 Pa. C.S.A. §6338.1(C)(4)(I)).
- Amends the definition of “sexually violent delinquent child” to include those who have been adjudicated delinquent and determined to be in need of commitment for an act of sexual violence committed on or after December 20, 2012. (See 42 Pa.C.S.A. §9799.12).

Link: <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2017&sInd=0&body=H&type=B&bn=0631>

Act 21 of 2018, signed by the Governor May 4, 2018

Effective: July 3, 2018

Titled: An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in child custody, further providing for standing for any form of physical custody or legal custody, for standing for partial physical custody and supervised physical custody and for consideration of criminal conviction.

Summary: This legislation expands legal standing for individuals seeking to gain custody of children where neither parent has any form of care and control of the child. Under this act, standing can be granted to an individual, such as a grandparent, that has a sincere concern for the child, but did not meet the previous conditions in the custody law. This act also makes a minor change to the statutory section regarding consideration of criminal convictions in the award of custody.

- Amends 23 Pa.C.S. §5324, Standing for any Form of Physical Custody or Legal Custody, Standing for Partial Physical Custody and Supervised Physical Custody and Consideration of Criminal Conviction by adding the following provisions:
 - (4) Subject to Paragraph (5), an individual who establishes by clear and convincing evidence all of the following:
 - (i) The individual has assumed or is willing to assume responsibility for the child.
 - (ii) The individual has sustained, substantial, and sincere interest in the welfare of the child. In determining whether the individual meets the requirements of this subparagraph, the court may consider, among other factors, the nature, quality, extent and length of the involvement by the individual in the child’s life.
 - (iii) Neither parent has any form of care and control of the child.
 - (5) Paragraph (4) shall **not** apply if:
 - (i) a dependency proceeding involving the child has been initiated or is ongoing; or
 - (ii) there is an order of permanent legal custody under 42 Pa.C.S. §6351 (a)(2.1) or (f.1)(3) (relating to disposition of dependent child). (emphasis added)
- The statute for standing at §5325 is also amended to permit grandparents and great-grandparents to petition for partial physical custody (visitation) or supervised physical custody (supervised visitation) when the relationship with the child began either with the consent of the parents or by order of court if the parents have commenced a custody action and do not agree as to whether grandparents or great-grandparents should have partial custody under this section.
- The statute for consideration of criminal conviction at §5329 remains substantially in its current form, except that the word “parent” was changed to “party” in one instance acknowledging that a party may be someone other than a parent.

Link: <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2017&sInd=0&body=S&type=B&bn=844>

Act 54 of 2018, signed by the Governor June 28, 2018

Effective: October 1, 2018 for Pa. C.S.A. §6386 (A.1) and Pa. C.S.A. §6386 (B.1), August 27, 2018 for 23 Pa. C.S.A. §6332(c), and June 28, 2019 for 23 Pa. C.S.A. §6337.

Titled: An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in child protective services, further providing for establishment of Statewide toll-free telephone number, for disposition and expungement of unfounded reports and general protective services reports, for employees having contact with children and adoptive and foster parents, for volunteers having contact with children and for mandatory reporting of children under one year of age.

Summary: This Act amends Pennsylvania’s Child Protective Services Law (CPSL). The most impactful of these is the amendment made to 23 Pa. C.S.A. §6386 (A) (relating to the notification of a plan of safe care for children under one), discussed below. The amendment to 23 Pa. C.S.A. §6332(c) requires that posters containing the statewide toll-free number for suspected child abuse be posted in high traffic areas in all K-12 schools. 23 Pa. C.S.A. §6337 (relating to expungement of unfounded reports) was also amended to require that General Protective Service Reports that are determined to be valid by the County Agency be maintained for 10 years or until the youngest child identified in the most recent general protective services report attains 23 years of age, whichever occurs first.

Amendments to 23 Pa. C.S.A. §6386 (A) include:

- The title of this section was changed from “Mandatory reporting of children under one year of age” to “Notification to department and development of plan of safe care for children under one year of age.”
- Rather than directly contacting the children and youth agency, healthcare providers are to give notice to the Department of Human Services if the provider determines “based on standards of professional practice,” that a child is born affected by “substance use or withdrawal symptoms” resulting from “prenatal drug exposure” or “fetal alcohol spectrum disorder.”
- A new section, 23 Pa. C.S.A. §6386 (A.1), was created to state that the aforementioned notifications from healthcare providers will not constitute a child abuse report.
- 23 Pa. C.S.A. §6386 (B.1) was also amended to add the requirement that screening tools be used to identify children born affected by prenatal drug exposure or fetal alcohol disorder.
- 23 Pa. C.S.A. §6386 (B.1) requires that a safe care plan be developed by a multi-disciplinary team prior to the child’s discharge from the healthcare facility, and that the family is engaged in identifying the need for treatment to address substance use and physical or behavioral health conditions that may affect the development and well-being of the child.

Link:<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2017&sind=0&body=H&type=B&bn=1232>

Act 88 of 2018, signed by the Governor October 23, 2018**Effective:** December 22, 2018**Titled:** An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in standby guardianship, further providing for definitions and for scope and providing for temporary guardianship; in child protective services, further providing for release of information in confidential reports[.] (abbreviated title)**Summary:** This legislation amends title 23 (Domestic Relations) §5602 and §5603 to allow for family members, defined as grandparents, aunt, uncle or adult sibling, to be appointed as “temporary guardians” when a custodial parent is absent due to treatment for substance abuse.

- The amendments define “temporary guardian” as, “a family member, appointed by a court for a limited period as a guardian of the minor when the minor's custodial parent has entered a rehabilitation facility for treatment of drug or alcohol addiction or has been subject to emergency medical intervention due to abuse of drugs or alcohol.”
- The changes outline the procedure for custodial parents to appoint temporary guardians and for family members to petition the court to be granting temporary guardianship status.

Link: <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2017&body=H&type=B&bn=1539>**Act 130 of 2018**, signed by the Governor October 24, 2018**Effective:** December 23, 2018**Titled:** An Act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in human trafficking, further providing for definitions, providing for concurrent jurisdiction, repealing provisions relating to appropriate implementation for minor victims of human trafficking, providing for special relief to restore victim's dignity and autonomy and for safe harbor for sexually exploited children, establishing the Safe Harbor for Sexually Exploited Children Fund and imposing penalties; and, in juvenile matters, providing for dependency in lieu of delinquency.**Summary:** This legislation amends Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to provide protection for juvenile human trafficking victims. This bill imposes a duty on the Department of Human Services to develop and implement a statewide protocol to deliver safe and stable housing, education, life-skills training, and counseling to children who have been exploited. Additionally, the bill requires that police officers be trained to identify and assist sexually exploited children. The bill also establishes the Safe Harbor for Sexually Exploited Children Fund to assist victims. In juvenile matters, the bill provides for immunity for certain offenses and concurrent jurisdiction, specifying dependency in lieu of delinquency whenever possible.**Link:** <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2017&body=S&type=B&bn=0554>

AMENDMENTS AND ADDITIONS TO THE RULES OF JUVENILE COURT PROCEDURE

EDUCATIONAL STABILITY

Date passed: December 21, 2018

Effective: May 1, 2019

The PA Supreme Court added to and amended the Rules of Juvenile Court Procedure to improve educational stability for youth.

The newly adopted rules are:

- **Rule 148** requires that educational stability be addressed any time an order results in the removal of a juvenile from his or her home.
- **Rule 1146** directs that notice of a citation or complaint of truancy be served upon the dependency court and parties when it involves a dependent child.
- **Rule 1148** requires that educational stability be addressed any time an order results in the placement or a change in placement of a child.

Several rules were also amended to support educational stability. These changes include:

- **Rule 195** adds that a juvenile probation officer shall receive allegations that a child has failed to satisfy penalties for violating compulsory school attendance, as permitted by local rule.
- **Rule 512** adds a requirement that the court make findings on the provision of educational services for the juvenile pursuant to Rule 148 at Dispositional hearings.
- **Rules 1147** lowers that age at which educational services to transition to successful adulthood (previously called independent living) from sixteen (16) to fourteen (14).

Link: <https://www.pabulletin.com/secure/data/vol49/49-2/42.html>

ADDITIONAL CHANGES TO THE RULES OF JUVENILE COURT PROCEDURE

Rule of Juvenile Court Procedure 409 – Adjudication of Delinquency

The Rule is amended to remove language regarding the termination of jurisdiction in delinquency matters and replacing it with language that “the petition shall be dismissed.”

Rule of Juvenile Court Procedure 1140 – Bench Warrants for Failure to Appear

The rule is amended to add section (a)(3) which provides as follows: The judge shall not issue an arrest warrant for a dependent child who absconds. The comment is amended to clarify that the rule does not preclude the issuance of a bench warrant for a child who is subject to the jurisdiction of the dependency and delinquency court or a pickup order for protective custody. The comments also clarify that the rule does not preclude judicial inquiry into efforts to locate a missing dependent child.

Rule of Juvenile Court Procedure 191 – Juvenile Court Hearing Officer’s Findings and Recommendations to the Judge

This rule is amended to include a subsection B which is intended to ensure that a juvenile is advised of the right to challenge the hearing officer’s recommendation and post-dispositional rights if a judge accepts the recommendation in a delinquency matter.

Rule of Juvenile Court Procedure 1601 – Notice for Goal Change from Reunification

This rule change added language that requires that notice be provided whenever a party seeks to change a permanency goal from reunification. The rationale behind this rule change is to “ensure that parties, counsel, and interested persons have notice of the purpose of the hearing and are able to prepare for and attend the hearing.”

Rule of Juvenile Court Procedure 415– Challenge to the Weight of the Evidence

This rule adds the procedure by which the ruling on an offense or an order of adjudication can be challenged as being against the weight of evidence. The purpose of this rule is to make it clear that a challenge to the weight of the evidence must be raised with the juvenile court judge or it will be waived.

OFFICE OF CHILDREN, YOUTH AND FAMILY

2018 BULLETINS

OCYF Bulletin #3130-18-06 Revised and Reissued Indian Child Welfare Act (ICWA)

Bulletin #3130-18-06 was issued on July 20, 2018 and is effective immediately. The purpose of the bulletin is to update established policy requirements relative to the protection of Indian Children as required by the Indian Child Welfare Act (ICWA) and establishes policy and procedure as it relates to transfer of responsibility for placement and care of Indian children under Title –IV E. This bulletin updates the OCYF Implementation of the Indian Child Welfare Act of 1978 Bulletin #3130-09-01 that was issued on March 9, 2009 by incorporating the requirements issued through the Indian Child Welfare Act Proceedings Final Rule, 25 CFR Part 23, on June 14, 2016. ICWA establishes minimum standards for child custody cases involving Indian children to promote stability in Native American families and maintain the Native American culture.

Link: http://swantoolkit.org/wp-content/uploads/OCYF-Bulletin-3130-18-06-Revised-and-Reissued-Indian-Child-Welfare-Act_Reissued-07202018.pdf

OCYF Bulletin #3130-18-02 Concurrent Planning Policy and Implementation

Bulletin #3130-18-02 was issued on July 20, 2018 and is effective immediately. This bulletin incorporates legislative changes and rescinds and replaces OCYF Bulletin #3130-12-03, issued in May, 2013. Since that time, amendments have been made to federal and state legislation that impact concurrent planning through the passage of Pennsylvania Acts 75 and 94 of 2015, which made Pennsylvania compliant with the federal Preventing Sex Trafficking and Strengthening Family Act (Public Law 113-183). Changes in this updated bulletin include support for children in out-of-home care to participate in age-appropriate and/or developmentally-appropriate activities and experiences; supporting that no child under the age of 16 shall have a court ordered goal of Another Planned Permanent Living Arrangement (APPLA); and the definition of the Reasonable and Prudent Parent Standard. The changes can be found in the Key Terms and Practice Considerations and in the Core Components of Concurrent Planning sections.

Link: http://swantoolkit.org/wp-content/uploads/OCYF-Bulletin-3130-18-02-Concurrent-Planning-Policy-and-Implementation_Issued-07202018.pdf

OCYF Bulletin #3130-18-04/3700-18-03/3800-18-01 Reasonable and Prudent Parent Standard

The legislative changes enacted in 2014 and 2015 promoting normalcy for children in out-of-home placements also clarified how decisions should be so that children have access to developmentally appropriate activities and experiences. This bulletin's purpose is to advise agencies, resource families

and placement settings supported by Title IV-E or IV-B funding of the legislative provisions for promoting normalcy for children in care through the reasonable and prudent parent standards.

Link: [http://swantoolkit.org/wp-content/uploads/OCYF-Bulletin- -3130-18-04-3700-18-03-3800-18-01-Reasonable-and-Prudent-Parenting-Standards issued-092620182.pdf](http://swantoolkit.org/wp-content/uploads/OCYF-Bulletin--3130-18-04-3700-18-03-3800-18-01-Reasonable-and-Prudent-Parenting-Standards-issued-092620182.pdf)

Special Transmittal: Relative Notification, Reissued September 13, 2018

The purpose of this transmittal is to inform county and private children and youth social service agencies about the impact of Pennsylvania Act 92 of 2015 related to the expansion of relative notification and the clarification of the definition of sibling. Per Act 92, for relative notification purposes, sibling is defined as “an individual who has at least one parent in common with another individual, whether by blood, marriage or adoption, regardless of whether or not there is a termination of parental rights and parental death. The term includes biological, adoptive, step and half-siblings.” The transmittal specifies that relative notification letters must be sent to any parent with a child meeting this definition. Efforts should be made place children with siblings, even if the children have never meet.

Link: <http://swantoolkit.org/wp-content/uploads/OCYF-Special-Transmittal-Relative-Notification REISSUED-9-13-18.pdf>

SPOTLIGHT

AMENDMENTS TO PA CODE OF JUDICIAL CONDUCT AND THE RULES GOVERNING STANDARDS FOR MAGISTERIAL DISTRICT JUDGES:

On April 25, 2018, the Supreme Court of Pennsylvania issued an order making amendments to the Pennsylvania Code of Judicial Conduct (Rules 3.1 and 3.6), and to the Rules Governing Magisterial District Judges (Rules 2.3, 3.1 and 3.6), to add language that precludes judges from discriminatory actions or expressions regarding “gender identity or expression” (Rule 3.1 for Judges and Magistrates) and from holding membership in an organization that engages in discrimination on the basis of “gender identity or expression” (Rule 3.6 for Judges and Magistrates). Rule 2.3 of the Rules Governing Magisterial District Judges was also amended to require that Magisterial Judges and attorneys (practicing in Magisterial Courts) refrain from manifesting bias based upon “gender identity or expression.” These amendments took effect July 1, 2018.

Link: <http://www.pacourts.us/assets/opinions/Supreme/out/Order%20Entered1%20%2010351980435848000.pdf?cb=1>