

New Pa. divorce law gets puts focus on custody issues

By Amy S. Rosenberg
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As a matrimonial lawyer and a Little League coach in Lower Merion Township, Joel Bernbaum was in a unique position to know when children were in the midst of a tough custody battle.

"I can tell a kid on my team whose parents are getting divorced, and it's not going well," said Bernbaum. "They're tired and emotionally nonresponsive. The damage to the children is heart-wrenching. They [parents] do not see it."

Parents may wish it otherwise, but it's hard to dispute that the children are the toughest part of any divorce resolution. Lawyers are hoping a sweeping rewrite of custody laws in Pennsylvania will help smooth out the legal end of the emotional process that until now has evolved case by case.

The legislation, in the works for a decade, took effect Jan. 23 and addresses post divorce arrangements for parents, children, and various other interested third parties.

Sponsored by Rep. Kathy Mandarino of Philadelphia, it puts into code a decade of common practices in family law in Pennsylvania.

For starters, the law requires one simple thing of judges: that they explain, either in writing or from the bench, why they decided the way they did. Previously, a parent might be left with an unfavorable ruling and no clue as to what the judge had found lacking.

Matrimony lawyers say that alone goes a long way to achieving a true settlement.

"It sets forth criteria that the court needs to look at in determining the best interest of the children," Bernbaum said. "It brings clarity. People often say, 'Why did the court decide that way?' This brings clarity."

The law also sets out new and expanded factors that must be considered in custody disputes, spelling out 16 offenses that the court must investigate to make a custody decision. These offenses will apply to any member of a household in which the child will spend supervised custody, including boyfriends or girlfriends of the parents.

What exactly constitutes a "household member" may yet be open to interpretation. "Keep in mind this hasn't been litigated yet," said Megan Watson, a lawyer in Philadelphia, "but it would be expected not to include a babysitter but to include anyone living there, including a nanny or au pair."

Lawyer Dorothy Phillips says the key points in the new law include the 14 factors specifically listed to evaluate the best interests of the child - including "which parent is more likely to encourage . . . contact" with the other parent, rules for custody relocation, new offenses including DUI, clarifications of the rights of grandparents (slightly more restrictive in granting them the right to seek full custody), and a suggested written parenting plan.

The law's new requirements, and how to abide by them, give some lawyers pause, especially in Philadelphia, where a majority of cases involve one or both parents representing themselves (pro se).

Watson said the requirement that the court investigate criminal offenses of any member of a household where the child will be supervised may place untenable obligations on an already strapped system.

"The court is a little panicked that they have this new mandate without any funding to hire any additional people," Watson said. "Those offenses have been significantly expanded, not just to litigants but to household members.

"It puts the onus on the court to do an evaluation to figure out if a person poses a threat to a child," she said. "Philadelphia's thinking . . . how will we figure out who the household members are, whether they've had criminal charges. There are not the resources out there."

She said the streamlined procedure for a parent wishing to relocate - designed in part to reduce the incidence of parents moving without filing any notice at all - is also problematic. The law states that the custodial parent must give 60 days' notice before a proposed move. If there is no objection, the parent may relocate.

"The concerns mostly relate to pro se litigants," Watson said. "If they want to object, and they don't know the procedure, they don't know what to do on their end."

On the positive side, Watson said, the law spells out exactly what should be in a parenting plan and gives a sample form that includes items such as the child's diet, religion, medical care, mental-health care, discipline, choice of school, school and sports activities, decision-making processes, temporary changes, and even which parent will attend activities (ideally both).

Watson said plans detailed in writing can help resolve conflicts. "If you don't know what the other side wants, you don't know what you're fighting about," she said.