

# Child Custody Press Call

## Bill Analysis

### **SB 868 – Kayden’s Law**

#### ***Bill Analysis:***

##### Custody Order Safety Conditions:

- If the court awards any form of custody to a party that was found to have posed an ongoing risk of harm to the child or an abused party, the safety conditions include supervised physical custody that would be conducted by a court-approved professional, under conditions that ensure the health and safety of the child;
- The supervised physical custody would not be conducted in the parent’s home and not extend overnight.
  - All costs would be paid by the parent awarded supervised physical custody.

##### Factors to Consider when Awarding Custody:

- This bill makes significant additions to the factors that judges must consider when awarding custody to protect the health and safety of the child, such as:
  - No form of custody may be awarded to a parent/party who jeopardizes the health and safety of the child by unreasonably placing the child at substantial risk of severe emotional distress or bodily injury;
  - A parent’s history of abuse against a household member and their history of violent, assaultive or abusive behavior that would put the child at risk if that parent was awarded any form of custody;
  - Adds that a child’s fear of a parent based on that parent’s conduct which is contrary to the child’s best interest must be considered well-reasoned; and
  - Adds that a parent’s mental condition, including, but not limited to their risk to self, must be considered if it creates a risk to the health and safety of the child or a party.
- This bill adds exceptions to certain factors that a judge can no longer give weight to if the court found child abuse, domestic violence or if the child’s physical or emotional well-being is being jeopardized by one of the parties.
- The bill ensures that a parent’s reasonable concerns for their child’s safety and their efforts to support and protect the child are not considered attempts to turn the child against the other parent.

### Evidentiary Hearing for Allegations of Child Abuse or a History of Domestic Violence in the Presence of the Child:

- If the court finds by clear and convincing evidence an act of child abuse or a pattern of domestic violence, the court shall award sole physical custody to the safe parent and shall suspend any physical custody to the parent engaged in a pattern of domestic violence or abusive behavior.
- Exception:
  - The court may award supervised physical custody if it is in the best interest of the child and it would protect the health and safety of the child;
  - If a parent shows by clear and convincing evidence that the parent is no longer a threat to the health and safety of the child after completion of a court-approved treatment plan, the court may award custody other than supervised physical custody to the parent.
    - All costs must be paid by the abusing parent.

### Conditions in Considering the Awarding of Custody:

- The court must consider evidence of the parent's current mental health condition and the risk that they will again subject the child or household member to abuse or unreasonably permit abuse to a child despite having the ability to prevent the abuse;
- The Court can only order custody if the parent proves by clear and convincing evidence that it's in the best interest of the child and the parent will not jeopardize the health and safety of the child.

### Adds "Strangulation" to the list of criminal convictions that must be considered when a party seeks any form of custody.

### Child Abuses and Domestic Violence Education and Training Program for Judges and Court Personnel:

- The Administrative Office of Pennsylvania Courts may develop and implement an ongoing education and training program for judges, including magisterial district judges, and relevant court personnel, including guardians ad litem, regarding child abuse, including child sexual abuse and trauma, and domestic violence and the impact of child abuse and domestic violence on children;
- The education and training program shall include the latest best practices from evidence-based and peer reviewed research; and
- The education and training program is to be designed to improve the ability of the court to recognize and respond to the impact of child abuse and domestic violence on all victims, specifically children, and make appropriate custody decisions that are in the best interest of the child.