

§ 5328. Factors to consider when awarding custody.

(a) Factors. – In ordering any form of custody, the Court shall determine the best interest of the child by considering all relevant factors, giving substantial weighted consideration to the factors specified under paragraphs (1), (2), (2.1) and (2.2) which affect the safety of the child, including the following:

- (1) Which party is more likely to ensure the safety of the child.
- (2) The present and past abuse committed by a party or member of the party's household, which may include past or current protection from abuse or sexual violence protection orders where there has been a finding of abuse.
 - (2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).
 - (2.2) Violent or assaultive behavior committed by a party.
 - (2.3) The level of cooperation and conflict between the parties, including:
 - (i) which party is more likely to encourage and permit frequent and continuing contact between the child and the other party or parties if contact is consistent with the safety needs of the child; and
 - (ii) the attempts by a party to turn the child against the other party, except in cases of abuse where reasonable safety measures are necessary to protect the safety of the child. A party's good faith and reasonable effort to protect the safety of a child or self shall not be considered evidence of unwillingness or inability to cooperate with the other party. A party's reasonable concerns for the safety of the child and the party's reasonable efforts to protect the child shall not be considered attempts to turn the child against the other party. A child's deficient or negative relationship with a party shall not be presumed to be caused by the other party.
- (3) A willingness and ability of a party to prioritize the needs of the child by providing appropriate care, stability and continuity for the child, considering the parental duties performed by the party on behalf of the child in the past and whether the party is willing and able to perform the duties in the future, and attend to the daily physical, emotional, developmental, educational and special needs of the child.
- (4) The need for stability and continuity in the child's education, family life and community life, except if changes are necessary to protect the safety of the child or a party.
- (5) (Deleted by amendment).
- (6) The child's sibling and other familial relationships.
- (7) The well-reasoned preference of the child, based on the child's developmental stage, maturity and judgment.
- (8) (Deleted by amendment).
- (9) (Deleted by amendment).

- (10) (Deleted by amendment).
- (11) The proximity of the residences of the parties.
- (12) Each party's employment schedule and availability to care for the child or ability to make appropriate child-care arrangements.
- (13) (Deleted by amendment).
- (14) The history of drug or alcohol abuse of a party or member of a party's household.
- (15) The mental and physical condition of a party or member of a party's household.
- (16) Any other relevant factor.

(a.1) Exception. – A factor under subsection (a) shall not be adversely weighed against a party if the circumstances related to the factor were in response to abuse or necessary to protect the child or the abused party from harm and the party alleging abuse does not pose a risk to the safety of the child at the time of the custody hearing. Temporary housing instability as a result of abuse shall not be considered against the party alleging abuse.

(a.2) Determination. – No single factor under subsection (a) shall by itself be determinative in the awarding of custody. The Court shall examine the totality of the circumstances, giving weighted consideration to the factors that affect the safety of the child, when issuing a custody order that is in the best interest of the child.

(b) Gender neutral. – In making a determination under subsection (a), no party shall receive preference based upon gender in any award granted under this chapter.

(c) Grandparents and great-grandparents. –

(1) In ordering partial physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2) (relating to standing for partial physical custody and supervised physical custody), the Court shall consider the following:

- (i) the amount of personal contact between the child and the party prior to the filing of the action;
- (ii) whether the award interferes with any parent-child relationship; and
- (iii) whether the award is in the best interest of the child.

(2) In ordering partial physical custody or supervised physical custody to a parent's parent or grandparent who has standing under section 5235(3), the Court shall consider whether the award:

- (i) interferes with any parent-child relationship; and
- (ii) is in the best interest of the child.

(d) List of custody factors. – Within thirty days of the receipt of a custody complaint, petition for the modification of custody or petition to intervene in matters relating to custody, the Court shall provide all parties named in the complaint or petition with a copy of this section.