

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed amendment of Pa.R.C.P. Nos. 1915.3-2 and 1915.4-4

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 1915.3-2 and 1915.4-4 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **October 4, 2019**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Domestic Relations Procedural Rules
Committee

Walter J. McHugh, Esq.
Chair

SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE
RULE PROPOSAL 154

Rule 1915.3-2. Criminal Record or Abuse History.

(a) **[Criminal Record or Abuse History Verification]***Criminal Record/
Abuse History Verification*.

- (1)** A party **[must]shall sign**, file **with the prothonotary**, and serve **on the other party a completed criminal record or abuse history verification** with **[the]a** complaint, **[any]** petition for modification, **[any]** counterclaim, **[any]** petition for contempt, or **[any count for custody in a divorce complaint]a divorce pleading that includes a custody claim** or counterclaim **[a verification regarding any criminal record or abuse history of that party and anyone living in that party's household]**.
- (2)** The verification shall be substantially in the form set forth in subdivision (c)**[below]**.
- (3)** The party **[must]shall** attach a blank verification form to a complaint, counterclaim, or petition served **[upon the other party]on other party**.
- (4)** Although the party served need not file a responsive pleading **[pursuant to Rule 1915.5, he or she must]to the complaint or petition, see Pa.R.C.P. No. 1915.5, the party shall sign**, file with the **[court a verification regarding his or her own criminal record or abuse history and that of anyone living in his or her household]prothonotary, and serve on the other party a completed criminal record or abuse history verification** on or before the initial in-person contact with the court (including, but not limited to, a conference with a conference officer or judge or conciliation, depending upon the procedure in the judicial district) but not later than 30 days after service of the complaint or petition.
- (5)** A party's failure to file a Criminal Record **[or] Abuse History Verification** may result in sanctions against that party. **[Both parties]**

(6) A party shall sign, file with the prothonotary, and serve on the other party an updated verification[s]:

(i) five days prior to a hearing or trial[.]; or

(ii) whenever a party's, household member's, or child's circumstances change or a party obtains additional information affecting the veracity of a previously filed verification.

[(b) Initial Evaluation. At the initial in-person contact with the court, the judge, conference officer, conciliator or other appointed individual shall perform an initial evaluation to determine whether the existence of a criminal or abuse history of either party or a party's household member poses a threat to the child and whether counseling is necessary. The initial evaluation required by 23 Pa.C.S. §5329(c) shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by a mental health professional if the court determines it is necessary. Consistent with the best interests of the child, the court may enter a temporary custody order on behalf of a party with a criminal history or a party with a household member who has a criminal history, pending the party's or household member's evaluation and/or counseling.]

(b) Initial Evaluation.

(1) During the initial in-person custody proceeding as provided in Pa.R.C.P. No. 1915.4(a), the judge, conference officer, conciliator, or other appointed individual shall determine whether a party or household member poses a threat to the child.

Note: See 23 Pa.C.S. § 5329(c).

(2) In determining if a party or household member poses a threat to the child or requires an additional evaluation or counseling, as provided in 23 Pa.C.S. §§ 5329(d) and (e), the judge, conference officer, conciliator, or other appointed individual shall consider the Criminal Record/Abuse History Verification forms required by subdivision (c) and other information or documentation of the individual's criminal record or abuse history.

Note: See 23 Pa.C.S. § 5330(b) and 42 Pa.C.S. § 1904.

(i) To the extent an individual has a criminal record or abuse history, the judge, conference officer, conciliator, or other appointed individual shall consider:

(A) the severity of the offense or abuse;

(B) when the offense or abuse occurred;

(C) if the victim was a child or family member; and

(D) whether the offense or abuse involved physical violence.

(ii) The judge, conference officer, conciliator, or other appointed individual shall disregard a criminal offense resolved by Accelerated Rehabilitative Disposition (ARD) or other diversionary programs.

(3) If it is in the child's best interest, the judge may enter an interim custody order pending the evaluation or counseling.

[Note: The court shall consider evidence of criminal record or abusive history presented by the parties. There is no obligation for the court to conduct an independent investigation of the criminal record or abusive history of either party or members of their household. The court should not consider ARD or other diversionary programs. When determining whether a party or household member requires further evaluation or counseling, or whether a party or household member poses a threat to a child, the court should give consideration to the severity of the offense, the age of the offense, whether the victim of the offense was a child or family member and whether the offense involved violence.]

(c) [Verification] Verification. The verification regarding criminal record or abuse history shall be substantially in the following form:

(Caption)

CRIMINAL RECORD / ABUSE HISTORY VERIFICATION

I _____, hereby swear or affirm[, subject to penalties of law including 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities] that:

[1. Unless indicated by my checking the box next to a crime below, neither I nor any other member of my household have been convicted or pled guilty or pled no contest or was adjudicated delinquent where the record is publicly available pursuant to the Juvenile Act, 42 Pa.C.S. § 6307 to any of the following crimes in Pennsylvania or a substantially equivalent crime in any other jurisdiction including pending charges:]

1. Unless I checked a box next to a listed crime or offense, neither a household member nor I have pled guilty or no contest, have been convicted or adjudicated delinquent in which the record is publicly available pursuant to the Juvenile Act, 42 Pa.C.S. § 6307, or have pending charges to a listed crime or offense in Pennsylvania or a substantially equivalent crime or offense from another state:

Check all that apply	Crime	Self	Other household member	Date of conviction, guilty plea, no contest plea or pending charges	Sentence
<input type="checkbox"/>	18 Pa.C.S. Ch. 25 (relating to criminal homicide)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. §2702 (relating to aggravated assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. §2706 (relating to terroristic threats)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. §2709.1 (relating to stalking)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. §2901 (relating to kidnapping)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. §2902 (relating to unlawful restraint)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

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|--------------------------|--|--------------------------|--------------------------|-------|-------|
| <input type="checkbox"/> | 18 Pa.C.S. §2903
(relating to false imprisonment) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §2910
(relating to luring a child into a motor vehicle or structure) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3121
(relating to rape) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3122.1
(relating to statutory sexual assault) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3123
(relating to involuntary deviate sexual intercourse) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3124.1
(relating to sexual assault) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3125
(relating to aggravated indecent assault) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3126
(relating to indecent assault) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3127
(relating to indecent exposure) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3129
(relating to sexual intercourse with animal) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §3130
(relating to conduct relating to sex offenders) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |

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|--------------------------|---|--------------------------|--------------------------|-------|-------|
| <input type="checkbox"/> | 18 Pa.C.S. §3301
(relating to arson and related offenses) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §4302
(relating to incest) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §4303
(relating to concealing death of child) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §4304
(relating to endangering welfare of children) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §4305
(relating to dealing in infant children) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §5902(b)
(relating to prostitution and related offenses) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §5903(c) or (d)
(relating to obscene and other sexual materials and performances) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §6301
(relating to corruption of minors) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §6312
(relating to sexual abuse of children) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. §6318
(relating to unlawful contact with minor) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |

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|--------------------------|---|--------------------------|--------------------------|--------------|--------------|
| <input type="checkbox"/> | 18 Pa.C.S. §6320
(relating to sexual exploitation of children) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 23 Pa.C.S. § 6114
(relating to contempt for violation of protection order or agreement) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | <u>42 Pa.C.S. § 62A14</u>
<u>(relating to contempt for violation of protection order or agreement)</u> | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | Driving under the influence of drugs or alcohol | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | Manufacture, sale, delivery, holding, offering for sale or possession of any controlled substance or other drug or device | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |

[**2. Unless indicated by my checking the box next to an item below, neither I nor any other member of my household have a history of violent or abusive conduct, or involvement with a Children & Youth agency, including the following:**

- | Check all that apply | Self | Other household member | Date |
|---|--------------------------|-------------------------------|-------------|
| <input type="checkbox"/> A finding of abuse by a Children & Youth Agency or similar agency in Pennsylvania or similar statute in another jurisdiction. | <input type="checkbox"/> | <input type="checkbox"/> | _____ |

- | | | | | |
|--------------------------|--|--------------------------|--------------------------|--------|
| <input type="checkbox"/> | Abusive conduct as defined under the Protection from Abuse Act in Pennsylvania or similar statute in another jurisdiction. | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | Involvement with a Children & Youth Agency or similar agency in Pennsylvania or another jurisdiction.
Where?: _____ | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | Other: _____ | <input type="checkbox"/> | <input type="checkbox"/> | _____] |

2. Unless I have checked a box next to one of the following statements, the statements do not apply to a household member, my child, or me.

<u>Check all that apply</u>	<u>Self</u>	<u>Household member</u>	<u>Child</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Involvement with a children and youth social service agency in Pennsylvania or a similar agency in another state.</u> <u>What county and state?:</u> _____			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>A determination or finding of abuse (i.e., indicated or founded report) by a children and youth social service agency or court in Pennsylvania or a similar agency or court in another state.</u> <u>What county and state?:</u> _____			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>An adjudication of dependency or delinquency under Pennsylvania's Juvenile Act or a similar law in another state.</u> <u>What county and state?:</u> _____ <u>Is the case active?</u> _____			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>A history of abuse as defined in the Protection from Abuse Act.</u>			

A history of sexual violence or intimidation as defined in the Protection of Victims of Sexual Violence and Intimidation Act.

3. Please list any evaluation, counseling, or other treatment received following a conviction or finding of abuse:

4. If any conviction above applies to a household member, not a party, state that person's name, date of birth, and relationship to the child.

5. If you are aware that the other party or members of the other party's household has **[or have]** a criminal record/abuse history, please explain:

I verify that the information above is true and correct to the best of my knowledge, information or belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signature

Printed Name

Only a party can sign this form. If a party is represented by an attorney, the attorney cannot sign this form on behalf of the party.

(d) *Child Abuse and Protective Services Involvement.* The court shall develop procedures by local rule, as appropriate, for:

(1) obtaining from the county children and youth social service agency the information required by 23 Pa.C.S. § 5329.1(a) that

will assist the court in determining the factors set forth in 23 Pa.C.S. §§ 5328(a)(2.1) and 5329(a);

- (2) distributing the information obtained in subdivision (d)(1) , as appropriate, to the party or the party' counsel while ensuring that the sharing of information from confidential reports is consistent with the law, including 23 Pa.C.S. § 6340; and
- (3) how the relevant information is introduced as evidence at a hearing or trial.

Explanatory Comment — 2019

Based on the amendments to 23 Pa.C.S. §§ 5328 and 5329 and the addition of 23 Pa.C.S. § 5329.1 included in the Act of Dec. 18, 2013, P.L. 1167, No. 107, several substantive rule amendments were made.

Subdivision (b) was reorganized, and the Note accompanying the previous version of the subdivision was deleted and incorporated into the rule text, instead.

Subdivision (c) was amended to include more specific questions on the Criminal Record/Abuse History Verification related to the individual's, child's, or household member's involvement with the county children and youth social service agency and the juvenile court system.

Subdivision (d) was added to the rule and requires judicial districts, as appropriate, to adopt local rules for obtaining information from the juvenile dependency court and the county children and youth social service agency demonstrating whether a party, child, or party's household member has had involvement with the juvenile court or the children and youth social service agency and appropriately distributing the information to the parties or the parties' counsel. Specific statewide rules providing for the information sharing mandated in Section 5329.1 were not promulgated due to the varied practice and procedures in the judicial districts' domestic relations courts and juvenile dependency courts.

In judicial districts with a "one family - one judge" policy or in counties in which a judge may hear the custody and dependency cases, a local rule may not be required as the judge will have access to the requisite Section 5329.1 information as set forth in 23 Pa.C.S. §§ 5328(a)(2.1) and 5329(a). In contrast, a local procedure may be necessary in judicial districts in which the juvenile dependency court's information and the county children and youth social service

agency's file are inaccessible to all of the custody litigants or the custody judge is not directly involved in the juvenile dependency case.

In several counties, judicial districts have developed forms to elicit the appropriate Section 5329.1 information from the children and youth social service agency. While this may be an appropriate information gathering practice, the court and parties should ensure the information obtained, which may be confidential, is handled in accordance with applicable laws and only distributed to the appropriate individuals. Moreover, the local rules and practice should ensure compliance with Pennsylvania Rules of Evidence.

Rule 1915.4-4. Pre-Trial Procedures.

* * *

(e) At the pre-trial conference, **the court shall consider** the following[**shall be considered**]:

- (1) issues for resolution by the court;
- (2) unresolved discovery matters;
- (3) **[any]**agreements of the parties;
- (4) issues relating to expert witnesses;
- (5) settlement **[and/]**or mediation of the case;
- (6) **a party's or household member's criminal record or abuse history or a party's, household member's, or child's involvement with the juvenile dependency court or the children and youth social service agency as outlined in 23 Pa.C.S. §§ 5329 and 5329.1, including the admissibility of related documents, other evidentiary issues, or testimony;**

Note: See 42 Pa.C.S. § 6307(a)(4.1) and 23 Pa.C.S. § 6340(a)(5.1).

- (7)** such other matters as may aid in the disposition of the case; and
- ([7]8)** if a trial date has not been scheduled, it shall be scheduled at the pre-trial conference.

* * *

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

REPUBLICATION REPORT

RECOMMENDATION 154

The Domestic Relations Procedural Rules Committee (“Committee”) is proposing amendments to Pa.R.C.P. No. 1915.3-2, Criminal Record or Abuse History, and Pa.R.C.P. No. 1915.4-4, Pre-Trial Procedures. Act 107 of 2013 (“Act”), effective January 1, 2014, directs custody courts to consider child abuse and the involvement of a party, household member, or child with a child protective services agency when determining child custody under 23 Pa.C.S. §§ 5321 - 5340. The Act further directs the Department of Public Welfare, now the Department of Human Services (DHS), the local county children and youth social services agencies (CYS), and the courts of common pleas to cooperate with the exchange of information that is necessary for the court’s determination of a child custody order. The Act amended not only Title 23 as it relates to child custody, but also the Child Protective Services Law, 23 Pa.C.S. §§ 6301 - 6375, and the Juvenile Act, 42 Pa. C.S. §§ 6301 - 6375.

As it relates to child custody determinations, the Act requires inter-branch cooperation between family courts and DHS, including CYS, for sharing reports and other information of families and children involved with CYS. The information sharing is necessary for a custody court to determine the newly amended factors in 23 Pa.C.S. §§ 5328(a)(2.1) and 5329.1(a).

The Act provides a number of procedural and evidentiary problems. First, child custody proceedings are adversarial, and the parties are required to present evidence in support of their claim for custody and addressing the Section 5328 factors, which now includes (a)(2.1). Often custody litigants are not the litigants in the dependency action (e.g., grandparents, other third parties) and may not have access to juvenile court records and CYS files, and the dependency/CYS information may be relevant to the custody action. Moreover, some dependency and CYS information or reports may be confidential and, as such, a custody litigant may be precluded from obtaining evidence relevant to the custody action.

Second, the Act amends the Child Protective Services Law and Juvenile Act by granting courts of common pleas access to reports, files, and court records that would assist the court in determining custody. Allowing the custody judge access to the CYS information and files places the judge in an investigative rather than an adjudicative role, which many comments objected to the previously published proposals.

Complicating matters are the varying court procedures in judicial districts for custody cases and juvenile dependency cases. In judicial districts in which judges hear both custody and dependency cases or the judicial district is “one family one judge,” the issues are less problematic since the court typically would be aware of the parties’ or child’s involvement with CYS and dependency court. Additionally, the court would already have access to the dependency case records and files, and may have conducted hearings in which this information had been entered as evidence. Although the issue of how CYS and dependency court information is entered into evidence into the custody action is still an issue as is third-party litigants having accessing confidential reports and information.

On two occasions, the Committee published for public comment a variation of this Rule Proposal in the *Pennsylvania Bulletin*, 46 Pa.B. 3932 (July 23, 2016) and 47 Pa.B. 3333 (June 17, 2017). After a substantial revision to the previous proposals, the Committee is now republishing the Rule Proposal. In the previous published rule proposals, Pa.R.C.P. No. 1915.3 had been included for amendment, which has been omitted from this proposal and, instead, an amendment to Pa.R.C.P. No. 1915.4-4 has been included.

Initially, the Committee proposes reformatting Pa.R.C.P. No. 1915.3-2 into an outline format rather than the current narrative format. The Committee believes this format is more easily understood, especially in rules in which there are numerous procedural parts. Additionally, the Committee has deleted the Note following the current rule text and, instead, incorporated the relevant portions into subdivision (b).

Also, the Rule Proposal adds subdivision (d) to Pa.R.C.P. No. 1915.3-2 providing for judicial districts to develop local rules/procedures for obtaining the requisite information from CYS and the dependency courts, as appropriate. As provided in the accompanying Explanatory Comment, the comment acknowledges the varying judicial district procedures in custody and juvenile dependency cases, and that a “one-size fits all” statewide rule was not appropriate or practical.

Finally, as noted above, the rule proposal adds an amendment to Pa.R.C.P. No. 1915.4-4, Pre-Trial Procedures. This proposed amendment would require the court address the parties’ criminal record or abuse history at a pre-trial conference. In addition, the proposed amendment would require the court address the admissibility of the CYS documents and information and other related evidentiary issues, including authenticating CYS witness testimony.

The DRPRC invites comments, concerns, and suggestions regarding this rulemaking proposal.