

§5329 Consideration of Criminal Conviction

PLEASE READ ALL OF THE INFORMATION CONTAINED IN THIS PACKET BEFORE YOU START FILLING OUT THE FORMS.

THIS PACKET DOES NOT CONSTITUTE LEGAL ADVICE. IF YOU HAVE ANY QUESTIONS ABOUT THIS PROCESS, YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY. THE COURT ASSUMES NO RESPONSIBILITY AND ACCEPTS NO LIABILITY FOR ACTIONS TAKEN BY USERS OF THESE DOCUMENTS, INCLUDING RELIANCE ON THEIR CONTENTS.

We encourage you to contact an attorney to advise you on this matter. If you cannot afford an attorney, the Court will not appoint an attorney for you. You may contact Northwestern Legal Services at (800) 665-6957 or (814) 724-1040 to see if they will provide free legal services to you. They are not obligated to do so.

You will be required to follow the State and Crawford County Rules of Civil Procedure and all applicable laws even if you do not have an attorney.

This packet should be used if any party involved in your custody case, or someone who lives with any party involved with your case, has been convicted, pled guilty or pled no contest to any of the crimes listed on page 4. There are two forms in this packet. Choose only one form:

- **If any party believes that the convicted person is a danger to the child(ren), that party should fill out the “Motion for 5329 Hearing”.**
- **If all of the parties agree that the convicted person is not a danger to the child(ren), fill out the “STIPULATION”.**

To fill out the form you choose, you will need:

- The original Complaint’s caption;
- The name of the person who committed the crime(s);
- The type of crime committed; and
- If filling out the STIPULATION, the signatures of everyone who is a party to the case.

IMPORTANT NOTICE

(FAILURE TO READ THIS MAY DELAY YOUR CUSTODY MEDIATION)

NO AWARD OF CUSTODY RIGHTS DUE TO CERTAIN CRIMINAL CONVICTIONS

If any party to the custody case or any member of a party's household has been convicted of or has pleaded guilty or no contest to any of the offenses listed on the attached page or an offense in another jurisdiction substantially equivalent to any of the attached offenses, Pennsylvania law will NOT allow the Court to enter an order granting ANY FORM OF CUSTODY to a person who has been convicted of or pled guilty or no contest to any of the listed offences or has anyone living in their household who has done so until the Court determines that they do not pose a threat of harm to the child(ren) listed in this custody action.

IF A PARTY OR A MEMBER OF A PARTY'S HOUSEHOLD HAS BEEN CONVICTED OF OR HAS PLEADED GUILTY OR NO CONTEST TO ANY OF THE LISTED OFFENSES, TO LIMIT THE AMOUNT OF DELAY UNTIL A CUSTODY MEDIATION IS HELD YOU SHOULD **IMMEDIATELY** DO THE FOLLOWING:

1. Call the Child Custody Mediator's office (814-333-7498) and tell them that you or another party or someone in a party's household has a conviction that will require an evaluation to determine if you or that person pose a threat of harm to the child(ren);
OR
2. Fill out and file the "Motion for a 5329 Evaluation" [page 5] or the "STIPULATION" [page 6] with the Prothonotary's Office in the Crawford County Judicial Center.

WHAT HAPPENS IF YOU FILE A "MOTION FOR 5329 EVALUATION?"

If you file a "Motion for a 5329 Evaluation" your mediation may be moved to a later date and an initial evaluation will be promptly set before a Juvenile Court Hearing Officer to make a preliminary determination as to whether the convicted person poses a threat of harm to the child(ren) and decide if counseling is necessary. The hearing will be brief and informal. No witnesses will be permitted.

If your hearing is postponed and the Juvenile Court Hearing Officer decides that the convicted person does not pose a threat of harm and no counseling is necessary, your mediation will be scheduled as soon as possible, but only after a Judge has reviewed and agreed with the decision of the Juvenile Court Hearing Officer. If your mediation is rescheduled, you will receive notice of the date and time by mail.

If the Juvenile Court Hearing Officer decides that the convicted person does pose a threat of harm and/or counseling is necessary, during the initial evaluation he will explain what must happen before your mediation can be rescheduled.

WHAT IF YOU FILE A "STIPULATION" SIGNED BY ALL PARTIES WITH THE CUSTODY MEDIATOR'S OFFICE?"

If you file a "STIPULATION" signed by all parties to the custody action agreeing that the convicted person does not pose a threat of harm to the child(ren), and a Judge agrees to accept that "STIPULATION", the mediation will be held without the need for a §5329 hearing before the Juvenile Court Hearing Officer. The convicted person may, at the discretion of the Court, still be required to attend counseling.

Instructions:

1. When filling out these forms, please write as clearly and neatly as possible.
2. Fill out these forms to the best of your ability, completing every line that applies. DO NOT LEAVE ANY LINES BLANK. Use “None” or “0” if necessary. Do NOT use “N/A” anywhere on the forms.
3. Check the original complaint to find out who the “Plaintiff” and “Defendant” would be. Be sure the caption is filled out EXACTLY the same on each form in your case; you should always have the same names in the same place. The “No.” line is for the case number, which was assigned when the original complaint was filed.
4. Review the list of crimes included in this packet [page 4]. If you, someone in your household, another party, or someone in another party’s household has been convicted, pled guilty or pled no contest to any of those crimes, you should fill out only one of the forms included in this packet:
 - a. The “Motion for a 5329 Evaluation” [page 5]. Use this form if you want a Juvenile Court Hearing Officer to decide if the convicted person is a danger to the child(ren) named in your Custody Complaint. You will need to write down the name of the convicted person and the crime or crimes that they committed on your Motion.
 - b. The “STIPULATION” [page 6]. Use this form if both you and the other parties agree that the convicted person is not a danger to the child(ren) named in your Custody Complaint. The Plaintiff, Defendant and every other party involved in the custody case must sign this form before it can be filed.
5. After you have chosen and filled out one of the forms, take it and the “Certificate of Compliance” [page 7] to the Prothonotary’s Office on the main floor of the Crawford County Judicial Center and file them, then serve them on all of the other parties in the case.
 - a. If the party has an attorney, you should mail by regular first class mail, hand deliver or leave a copy of the documents at their attorney’s office. If the attorney has a box in the Prothonotary’s Office, you can leave their copy in their box if the attorney previously agreed in this case to receive service that way.
 - b. If the party does not have an attorney and you know their current address, you should mail by regular first class mail, hand deliver or leave a copy of the documents at the party’s home.
 - c. If the party does not have an attorney and you do not know their current address, you should mail by regular first class mail or leave a copy of the documents at the address that the party put on their most recent pleading in this case, or hand deliver the documents if you can locate the party somewhere else.
 - d. You can serve the documents by fax if the party or their attorney agreed, or if the party or their attorney put a fax number on an earlier pleading in this case. Please read Rule 440(d)(2) to see how the fax cover sheet should be prepared.
6. If you filed the “Motion for a 5329 Hearing”, the motion will be reviewed and a hearing set by the Court Administrator’s Office. Once the hearing is set, you will receive a copy of the Order, either by mail or fax, containing the time and date of your hearing.

23 Pa. C.S.A. § 5329. Consideration of criminal conviction.

(a) Offenses. – Where a party seeks any form of custody, the Court shall consider whether that party or member of that party’s household has been convicted of or has pleaded guilty or no contest to any of the offenses in this section or an offense in another jurisdiction substantially equivalent to any of the offenses in this section. The Court shall consider such conduct and determine that the party does not pose a threat of harm to the child before making any order of custody to that party when considering the following offenses:

- 18 Pa. C.S. Ch. 25 (relating to criminal homicide).
- 18 Pa. C.S. § 2702 (relating to aggravated assault).
- 18 Pa. C.S. § 2706 (relating to terrorist threats).
- 18 Pa. C.S. § 2709.1 (relating to stalking).
- 18 Pa. C.S. § 2901 (relating to kidnapping).
- 18 Pa. C.S. § 2902 (relating to unlawful restraint).
- 18 Pa. C.S. § 2903 (relating to false imprisonment).
- 18 Pa. C.S. § 2910 (relating to luring a child into a motor vehicle or structure).
- 18 Pa. C.S. § 3121 (relating to rape).
- 18 Pa. C.S. § 3122.1 (relating to statutory sexual assault).
- 18 Pa. C.S. § 3123 (relating to involuntary deviate sexual intercourse).
- 18 Pa. C.S. § 3124.1 (relating to sexual assault).
- 18 Pa. C.S. § 3125 (relating to aggravated indecent assault).
- 18 Pa. C.S. § 3126 (relating to indecent assault).
- 18 Pa. C.S. § 3127 (relating to indecent exposure).
- 18 Pa. C.S. § 3129 (relating to sexual intercourse with an animal).
- 18 Pa. C.S. § 3130 (relating to conduct relating to sex offenders).
- 18 Pa. C.S. § 3301 (relating to arson and related offenses).
- 18 Pa. C.S. § 4302 (relating to incest).
- 18 Pa. C.S. § 4303 (relating to concealing the death of a child).
- 18 Pa. C.S. § 4304 (relating to endangering the welfare of children).
- 18 Pa. C.S. § 4305 (relating to dealing in infant children).
- 18 Pa. C.S. § 5902 (b) (relating to prostitution and related offenses).
- 18 Pa. C.S. § 5903 (c) or (d) (relating to obscene and other sexual materials and performances).
- 18 Pa. C.S. § 6301 (relating to corruption of minors).
- 18 Pa. C.S. § 6312 (relating to sexual abuse of children).
- 18 Pa. C.S. § 6318 (relating to unlawful contact with minor).
- 18 Pa. C.S. § 6320 (relating to sexual exploitation of children).
- Section 6114 (relating to contempt for violation of order or agreement).
- The former 75 Pa. C.S. § 3731 (relating to driving under the influence of alcohol or controlled substance).
- 75 Pa. C.S. 3731 (relating to driving after imbibing alcohol or utilizing drugs).
- Section 13(a)(1) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, to the extent that it prohibits the manufacture, sale or delivery, holding, offering for sale or possession of any controlled substance or other drug or device.

**IN THE COURT OF COMMON PLEAS OF CRAWFORD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

Plaintiff
vs. _____
Defendant

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No. _____

MOTION FOR A 5329 EVALUATION

AND NOW, this _____ day of _____, 20____

the _____, moves the Court to schedule a prompt 5329
(Plaintiff, Defendant or Intervener)

Evaluation hearing before the Juvenile Court Hearing Officer because _____
(fill in the name of the party or the
_____ *has been convicted of* _____
household member who has the conviction that requires this hearing)

_____, and therefore a hearing is required.
(crime or crimes committed)

(Your Signature)

ORDER

AND NOW, this _____ day of _____, 20____ upon consideration of the "Motion for a 5329 Evaluation" a hearing is set before the Juvenile Court Hearing Officer for the _____ day of _____, 20____, at ____ o'clock, _____ M., in the Fourth Floor Hearing Room at the Crawford County Judicial Center.

BY THE COURT,

J.

Distribute to:
Plaintiff: _____
Defendant: _____
Other parties: _____

If the person with the conviction has completed any court ordered or voluntary counseling or rehabilitation program after the conviction, he/she MUST bring their Certificate of Completion to this hearing.

**IN THE COURT OF COMMON PLEAS OF CRAWFORD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

Plaintiff	:	
	:	
vs.	:	No. _____
	:	
Defendant	:	

STIPULATION

AND NOW, this _____ day of _____, 20____
all of the parties agree that _____, having been
convicted of or having pled guilty or no contest to one of the offenses set forth in 23 Pa.C.S.A.
§5329(a) or a substantially equivalent offense in another jurisdiction does not pose a threat to the
child(ren) and does not need counseling.

Therefore we agree this custody action can move forward without delay.

Plaintiff

Defendant

***** (Each party in this action must sign above if they agree to this STIPULATION)**

ORDER

AND NOW, this _____ day of _____, 20____ the
parties having filed a STIPULATION that _____ does
not pose a threat to the child(ren) and does not need counseling. The Court directs that custody
mediation may now be scheduled.

BY THE COURT,

J.

Distribute to:
Plaintiff: _____
Defendant: _____
Other parties: _____

IN THE COURT OF COMMON PLEAS OF CRAWFORD COUNTY, PENNSYLVANIA

v.

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No. _____

CERTIFICATE OF COMPLIANCE

This form is associated with the pleading titled _____, dated _____, 20____.

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Signature

Date

Name: _____

Attorney No. (if applicable): _____

Address: _____

Telephone: _____

Email: _____
