

# SENATE, No. 273

## STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator GERALD CARDINALE**

**District 39 (Bergen and Passaic)**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris and Somerset)**

**Co-Sponsored by:**

**Senators Bateman, T.Kean, Doherty and Van Drew**

**SYNOPSIS**

Establishes presumption of joint legal and physical custody in child custody matters.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 2/16/2018)**

1 AN ACT concerning child custody and amending R.S.9:2-4.

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3 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
4 *of New Jersey:*

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6 1. R.S.9:2-4 is amended to read as follows:

7 9:2-4. The Legislature finds and declares that it is in the public  
8 policy of this State to assure minor children of frequent and  
9 continuing contact with both parents after the parents have  
10 separated or dissolved their marriage and that it is in the public  
11 interest to encourage parents to share the rights and responsibilities  
12 of child rearing in order to effect this policy. The court shall  
13 presume that an award of joint legal and physical custody is in the  
14 best interests of the child.

15 In any proceeding involving the custody of a minor child, the  
16 rights of both parents shall be equal and there shall be a rebuttable  
17 presumption of joint legal custody and equal or approximately equal  
18 physical custody. **[the]** The court shall enter an order for joint  
19 legal and physical custody of a minor child to both parents which  
20 shall include: (1) provisions for residential arrangements so that a  
21 child shall reside an equal or approximately equal amount of time  
22 with each parent in accordance with the needs of the child and the  
23 parents; and (2) provisions for consultation between the parents in  
24 making major decisions regarding the child's health, education, and  
25 general welfare.

26 To rebut the presumption of equal or approximately equal  
27 physical custody, a parent shall bear the burden of proof and must  
28 provide clear and convincing evidence that joint physical custody is  
29 harmful to the child. Findings of fact shall be placed on the record.

30 If the court determines that the presumption of joint legal and  
31 equal or approximately equal physical custody is rebutted, the court  
32 shall enter an order which may include:

33 a. Joint custody of a minor child to both parents, which is  
34 comprised of legal custody or physical custody which shall include:  
35 (1) provisions for residential arrangements so that a child shall  
36 reside either solely with one parent or alternatively with each parent  
37 in accordance with the needs of the parents and the child; and (2)  
38 provisions for consultation between the parents in making major  
39 decisions regarding the child's health, education and general  
40 welfare;

41 b. Sole custody to one parent with appropriate parenting time  
42 for the noncustodial parent; or

43 c. Any other custody arrangement as the court may determine  
44 to be in the best interests of the child.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 In making an award of custody, the court shall consider but not  
2 be limited to the following factors: [the parents' ability to agree,  
3 communicate and cooperate in matters relating to the child;] the  
4 parents' willingness to accept custody and any history of  
5 unwillingness to allow parenting time not based on substantiated  
6 abuse; the interaction and relationship of the child with its parents  
7 and siblings; the history of domestic violence, if any; the safety of  
8 the child and the safety of either parent from physical abuse by the  
9 other parent; the preference of the child when of sufficient age and  
10 capacity to reason so as to form an intelligent decision; the needs of  
11 the child; the stability of the home environment offered; the quality  
12 and continuity of the child's education; the fitness of the parents;  
13 the geographical proximity of the parents' homes; the extent and  
14 quality of the time spent with the child prior to or subsequent to the  
15 separation; the parents' employment responsibilities; and the age  
16 and number of the children. A parent shall not be deemed unfit  
17 unless the parents' conduct has a substantial adverse effect on the  
18 child.

19 The court, for good cause and upon its own motion, may appoint  
20 a guardian ad litem or an attorney or both to represent the minor  
21 child's interests. The court shall have the authority to award a  
22 counsel fee to the guardian ad litem and the attorney and to assess  
23 that cost between the parties to the litigation.

24 d. The court shall order any custody arrangement which is  
25 agreed to by both parents unless it is contrary to the best interests of  
26 the child.

27 e. In any case in which the parents cannot agree to a custody  
28 arrangement, the court may require each parent to submit a custody  
29 plan which the court shall consider in awarding custody.

30 f. The court shall specifically place on the record the factors  
31 which justify any custody arrangement not agreed to by both  
32 parents.

33 (cf: P.L.1997, c.299, s.9)

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35 2. This act shall take effect immediately.

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#### STATEMENT

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40 This bill provides that a presumption of joint legal and equal or  
41 approximately equal physical custody in a child custody  
42 determination is in the best interests of the child.

43 The current law provides that the court will order any custody  
44 arrangement which has been agreed to by both parents unless it is  
45 contrary to the best interests of the child. Courts may award joint  
46 custody, which is comprised of legal custody or physical custody  
47 with the child residing either solely with one parent or alternatively  
48 with each parent according to the needs of the parents and the child,

1 and the parents sharing in the decision-making regarding their  
2 children's health, education and general welfare; sole custody to  
3 one parent with appropriate parenting time for the noncustodial  
4 parent; or any other custody arrangement as determined to be in the  
5 child's best interest. Existing law also provides that in any custody  
6 determination, the best interests of the child is the primary  
7 consideration.

8 The bill makes it a presumption that the court will award parents  
9 joint legal and equal or approximately equal physical custody of  
10 their children. Under the bill, a child will reside for an equal or  
11 approximately equal amount of time with each parent in accordance  
12 with the needs of the child, and the parents will share decision-  
13 making authority and responsibility as to the important decisions  
14 affecting the child's welfare. This presumption may be rebutted if  
15 the parent can show by clear and convincing evidence that an order  
16 of joint legal and physical custody is harmful to the child. If the  
17 presumption is successfully rebutted, then a court may award  
18 custody in the manner currently prescribed under existing law.