

SENATE, No. 1607

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 16, 2012

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Provides for a presumption of joint physical custody in a child custody determination; addresses relocation.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning child custody, supplementing Title 2A of the
2 New Jersey Statutes and Title 9 of the Revised Statutes and
3 repealing R.S.9:2-4.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. The Legislature finds and declares that: it is the public
9 policy of this State to assure a child of frequent and continuing
10 contact with both parents when the parents live separately or after
11 parental separation or dissolution of marriage; it is in the public
12 interest to encourage parents to endorse the principle of joint
13 physical custody as the preferred custody arrangement when it is in
14 the best interests of a child; the preference for joint physical
15 custody fosters the ability of a child to have frequent contact with
16 both parents; joint physical custody promotes the best interests of a
17 child by ensuring that parents are available to spend time with a
18 child and discourages a child from being alienated or
19 disenfranchised from the child's parents' lives by geographical
20 relocation or through the interference of one parent with the
21 relationship the child enjoys with the other parent; it is in the public
22 interest to establish a clear legislative policy regarding interference
23 with the relationship a child enjoys with both parents following
24 separation or dissolution of marriage by endorsing the principle
25 that, in a custody determination, the rights of both parents are equal
26 and that joint physical custody ensures that the State will abide by
27 this principle while reminding concerned parents of the importance,
28 for a child, of access to both parents.
29

30 2. a. There shall be a presumption in a court determination of
31 child custody that an order of joint physical custody is in the best
32 interests of the child. Joint physical custody shall be ordered unless
33 a parent:

34 (1) disagrees with the court's presumption that an order of joint
35 physical custody is in the best interests of the child as provided in
36 subsection b. of this section; or

37 (2) is a victim of domestic violence as defined in section 3 of
38 P.L.1991, c.261 (C.2C:25-19) and the perpetrator of the crime or
39 offense involving domestic violence is the other parent as provided
40 in subsection c. of this section.

41 b. If a parent disagrees with the court's presumption that an
42 order of joint physical custody is in the best interests of the child,
43 the presumption may be rebutted by the parent, if the parent can
44 demonstrate by clear and convincing evidence that an order of joint
45 physical custody is not in the best interests of the child.

46 c. If a parent is a victim of domestic violence, as defined in
47 section 3 of P.L.1991, c.261 (C.2C:25-19), the court shall presume
48 that an order of joint physical custody is not in the best interests of

1 the child. The presumption may be rebutted by the parent found
2 guilty of a crime or offense involving domestic violence, if the
3 parent can demonstrate by clear and convincing evidence that an
4 order of joint physical custody is in the best interests of the child.

5 d. If the court determines that joint physical custody is not in
6 the best interests of the child, the court shall enter an order which
7 may include:

8 (1) sole custody to one parent with appropriate parenting time
9 for the noncustodial parent; or

10 (2) any other custody arrangement as the court may determine to
11 be in the best interests of the child.

12 e. If joint physical custody is not ordered, the court's order
13 shall include findings as to why joint physical custody is not in the
14 best interests of the child.

15 f. As used in this act "joint physical custody" means:

16 (1) that a child shall reside equally with each parent for
17 specified periods of time. This does not mean that the child is
18 required to reside with each parent for an equal amount of time
19 during any given period; and

20 (2) that a child's parents shall share decision-making authority
21 and responsibility as to the important decisions affecting the child's
22 welfare.

23 g. The court, in making a determination of child custody
24 pursuant to this section, shall consider and evaluate the following
25 factors:

26 (1) The capacity and disposition of the parents and other
27 involved parties to give the child love, guidance and affection;

28 (2) The capacity and disposition of the parents and other
29 involved parties to continue the education and religious education
30 of the child;

31 (3) The capacity and disposition of the parents and other
32 involved parties to provide food, clothing and medical care;

33 (4) The mental and physical health and moral fitness of the
34 parents and other involved parties;

35 (5) The home, school and community record of the child;

36 (6) The preference of the child if the court considers the child of
37 sufficient age or maturity to express a preference and if the court
38 determines that the child's preference has not been influenced by
39 either parent or other involved parties;

40 (7) The willingness and ability of each parent to facilitate and
41 encourage a close and continuing relationship between the child and
42 the other parent; and

43 (8) Any history of or potential for child abuse, spousal abuse or
44 interference of custody.

45 h. The court shall order any custody arrangement which is
46 agreed to by both parents unless it is contrary to the best interests of
47 the child.

48 i. In any case in which the parents cannot agree upon a custody

1 arrangement, the court may require each parent to submit a custody
2 plan which the court shall consider in awarding custody.

3

4 3. a. When joint physical custody is not ordered, the court may
5 include a restriction prohibiting either parent from relocating if that
6 relocation would unreasonably interfere with the relationship that
7 the child has with the other parent, unless the relocating parent first
8 obtains written consent of the other parent or a court order. No
9 presumption shall arise in favor of or against the relocation request.

10 b. If a parent wishes to relocate, the relocating parent shall file
11 and serve a notice of intent to relocate upon the other parent. If the
12 other parent does not file and serve a notice of objection to the
13 relocation on the other parent within 90 days of receipt of the
14 notice, such failure to respond shall be evidence of consent and the
15 court may approve the relocation based on the best interests of the
16 child.

17 c. When contested, the court may approve a parent's request to
18 relocate with the child if the court determines by written findings,
19 after an evidentiary hearing for which notice has been provided to
20 all concerned parties, that the relocation will promote the best
21 interests of the child in accordance with the considerations set forth
22 in subsection d. of this section. The relocating parent has the
23 burden of proof at that evidentiary hearing. If uncontested, the
24 court may approve such request upon written stipulation of the
25 parties, without the requirement of a hearing.

26 d. In determining whether relocation will promote the best
27 interests of the child, the court shall consider the following:

28 (1) Whether the child will maintain substantial contact, joys and
29 the rearing of the other parent even if the relocation is approved;

30 (2) Whether the relocation would improve the general quality of
31 life for the child, giving due consideration to the disruption, if any,
32 caused by the day to day relationship between the parent not
33 relocating and the child;

34 (3) Each parent's motive in seeking or opposing the relocation;

35 (4) Whether the costs of transportation or revised parenting time
36 is financially affordable by the parents;

37 (5) Whether the relocation of either parent will cause an undue
38 burden on the other parent;

39 (6) Access to extended family support if needed;

40 (7) Whether there has been any history of sexual or physical
41 abuse;

42 (8) The impact of the relocation on each parent; and

43 (9) The impact on the child including whether the relocation is
44 harmful to the health or well-being of the child.

45 e. Every court order approving a relocation request in
46 accordance with this section shall include a parenting time schedule
47 consistent with the child's best interests.

1 4. If joint physical custody has been ordered by the court
2 pursuant to P.L. , c. (C.)(pending before the Legislature as this
3 bill), an order for child support issued pursuant to the provisions of
4 N.J.S.2A:34-23 shall include a provision stating that joint physical
5 custody has been ordered by the court.

6
7 5. R.S.9:2-4 is repealed.

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9 6. This act shall take effect on the 30th day after enactment.

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12 STATEMENT

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14 This bill provides for a presumption of joint physical custody in
15 a child custody determination. Joint physical custody shall be
16 ordered unless a parent:

- 17 • disagrees with the court's presumption that an order of joint
18 physical custody is in the best interests of the child and
19 rebuts the presumption by demonstrating by clear and
20 convincing evidence that joint physical custody is not in the
21 best interests of the child; or
22 • is a victim of domestic violence and the perpetrator of the
23 domestic violence is the other parent. The parent found
24 guilty of a crime or offense involving domestic violence can
25 rebut the presumption that joint physical custody is not in
26 the best interest of the child by demonstrating by clear and
27 convincing evidence that joint physical custody is in the best
28 interests of the child.

29 If the court determines that an order of joint physical custody is
30 not in the best interests of the child, the court shall enter an order
31 which may include sole custody to one parent with appropriate
32 parenting time for the noncustodial parent, or any other custody
33 arrangement as the court may determine to be in the best interests of
34 the child. If joint physical custody is not ordered, the court's order
35 shall include findings as to why joint physical custody is not in the
36 best interests of the child. Under the provisions of the bill "joint
37 physical custody" means that a child shall reside equally with each
38 parent for specified periods of time and that the parents shall share
39 decision-making authority and responsibility as to the important
40 decisions affecting the child's welfare. Joint physical custody does
41 not mean that the child is required to reside with each parent for an
42 equal amount of time during any given period.

43 The bill provides that the court, in making a determination of
44 child custody, shall consider and evaluate certain delineated factors.
45 The bill also provides that the court shall order any custody
46 arrangement which is agreed to by both parents unless it is contrary
47 to the best interests of the child and, in any case in which the
48 parents cannot agree to a custody arrangement, the court may

1 require each parent to submit a custody plan which the court shall
2 consider in awarding custody.

3 The bill provides that when joint physical custody is not ordered,
4 the court may include a restriction prohibiting either parent from
5 relocating if that relocation would unreasonably interfere with the
6 relationship that the child has with the other parent. When
7 contested, the court may approve a parent's request to relocate with
8 the child if the court determines, by written findings and after an
9 evidentiary hearing, that the relocation will promote the best
10 interests of the child. If uncontested, the court may approve such
11 request upon written stipulation of the parties, without the
12 requirement of a hearing. No presumption shall arise in favor of or
13 against the relocation request.

14 The bill sets forth factors for the court's consideration in
15 determining whether relocation will promote the best interests of
16 the child.

17 The bill provides that if joint physical custody is ordered by the
18 court, any child support order issued pursuant to N.J.S.A.2A:34-23
19 shall include a provision stating that joint physical custody has been
20 ordered by the court.

21 Finally, the bill repeals R.S.9:2-4 which provides for the types of
22 custody arrangements a court can order when a child's parents have
23 separated or dissolved their marriage, as the provisions of that
24 section are replaced by this bill.