

\_\_\_\_\_  
Councilmember Phil Mendelson

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Councilmember TommyWells

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Councilmember David Catania

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Councilmembers Tommy Wells, Phil Mendelson and David Catania introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To amend Title 16, Chapter 20 to permit persons other than parents to seek custody of a child when in the child’s best interests while recognizing and enforcing the constitutional rights of parents.

1           BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
2 act may be cited as the “Safe and Stable Homes for Children and Youth Act of 2007.”

3           Sec. 2. Chapter 20 of Title 16 of the District of Columbia Official Code is amended by  
4 adding the following subchapter:

5           “Subchapter I. Third-Party Custody.

6           “16-2000. Purpose of the subchapter.

7           “The general purpose of this subchapter is to:

8           “(a) protect children who are living in safe and stable homes and who have strong emotional  
9 ties to their caregivers;

10          “(b) ensure that persons other than parents may seek court-ordered custody of a child when in  
11 the child’s best interests; and

1 “(c) ensure that the constitutional rights of parents are recognized and enforced in all judicial  
2 proceedings conducted pursuant to this subchapter.

3 “16-2001. Definitions.

4 “As used in this subchapter, the following terms have the following meanings:

5 “(a) ‘Third party’ means a person other than the child’s parent.

6 “(b) ‘Person assuming parental responsibilities’ means a third party who, at any time within  
7 one year of the filing of the complaint or motion, (1) has lived in the same household as the  
8 child; (2) has voluntarily assumed, in whole or in part, duties and obligations for which a parent  
9 is legally responsible, such as providing the child with food, clothing, shelter, education and  
10 other care to meet the child’s needs; and (3) has formed shared emotional ties with the child.

11 “(c) ‘Physical custody’ means a child’s living arrangements, including the child’s residency  
12 and visitation schedule.

13 “(d) ‘Legal custody’ means legal responsibility for a child, including the right to make  
14 decisions regarding the child’s health, education, and general welfare, the right to access the  
15 child’s educational, medical, psychological, dental, or other records, and the right to speak with  
16 and obtain information regarding the child from school officials, health care providers,  
17 counselors, or other persons interacting with the child.

18 “16-2002. Action for Custody of Child by a Third Party.

19 “(a) A third party may file a complaint for custody of a child or may intervene in any existing  
20 action involving custody of the child.

21 “(b) The court has authority to decide a third-party action or motion to intervene filed under  
22 this subchapter notwithstanding any other matters pending before the court involving the child,

1 including but not limited to actions for adoption pursuant to Title 16, Chapter 3 or actions  
2 concerning neglected or abused children pursuant to Title 16, Chapter 23.

3 “16-2003. Third-Party Custody Orders.

4 “(a) A custody order entered under this subchapter may include any of the following:

5 “(1) sole legal custody to the third party;

6 “(2) sole physical custody to the third party;

7 “(3) joint legal custody between the third party and a parent;

8 “(4) joint physical custody between the third party and a parent; or

9 “(5) any other custody arrangement the court determines is in the best interests of the  
10 child

11 “(b) An order granting relief under this subchapter shall be in writing and shall recite the  
12 findings upon which the order is based.

13 “16-2004. Parental Presumption.

14 “(a) Except when a parent consents to the relief sought by the third party, there is a rebuttable  
15 presumption in all proceedings under this subchapter that custody with the parent is in the child’s  
16 best interests.

17 “(b) If the court grants custody of the child to a third party over parental objection, the court  
18 order shall include written findings of fact supporting the rebuttal of the parental presumption.

19 “16-2005. Award of Custody to Person Assuming Parental Responsibilities for a Child;  
20 Award of Custody in Other Circumstances.

21 “(a) The court shall award custody of the child to the third party upon determining that (1) the  
22 presumption in favor of parental custody has been rebutted, and (2) custody with the third party  
23 is in the child’s best interests.

1 “(b) When the third party seeking custody is a person who has assumed parental  
2 responsibilities for the child as defined in 16-2001(b), the third party shall bear the burden of  
3 rebutting the presumption in favor of parental custody by a preponderance of the evidence. In all  
4 other circumstances, the third party seeking custody shall bear the burden of rebutting the  
5 parental presumption by clear and convincing evidence.

6 “(c) Notwithstanding any other provision of this subchapter, the court shall enter an order for  
7 any custody arrangement that is agreed to by all parties unless clear and convincing evidence  
8 indicates that the arrangement is not in the best interests of the child.

9 “16-2006. Factors to Consider in Rebutting the Parental Presumption.

10 “In determining whether the presumption favoring parental custody has been rebutted, the court  
11 shall consider each of the following factors:

12 “(a) whether the parent is unwilling or unable to care for the child;

13 “(b) whether custody with the parent is or would be detrimental to the physical or emotional  
14 well-being of the child; and

15 “(c) the extent to which the parent has assumed responsibility for the child’s care over time,  
16 including the history of the child’s living arrangements.

17 “(d) any exceptional circumstances that may exist to support rebuttal of the presumption  
18 favoring parental custody.

19 “16-2007. Factors to Consider in Determining Best Interests.

20 “In determining whether custody with a third party is in the child’s best interests, the court shall  
21 consider all relevant factors, including but not limited to:

1 “(a) the child’s need for continuity of care and caretakers, and for timely integration into a  
2 stable and permanent home, taking into account the differences in the development and the  
3 concept of time of children of different ages;

4 “(b) the physical, mental, and emotional health of all individuals involved to the degree that  
5 each affects the welfare of the child, the decisive consideration being the physical, mental, and  
6 emotional needs of the child;

7 “(c) the quality of the interaction and interrelationship of the child with his or her parent,  
8 siblings, relatives, and caretakers, including the third-party custody complainant or movant; and

9 “(d) to the extent feasible, the child’s opinion of his or her own best interests in the matter;

10 “16-2008. Pendente Lite Relief.

11 “(a) During the pendency of any proceeding under this subchapter, the court may determine,  
12 pursuant to the provisions of this subchapter, the custody of the child pending final determination  
13 of that issue.

14 “(b) The court may enter any appropriate pendente lite relief.

15 “16-2009. Effect of a Third-Party Custody Order.

16 “An order awarding physical or legal custody of a child to a third party does not terminate the  
17 parent and child relationship, including:

18 “(a) the right of the child to inherit from his or her parent;

19 “(b) the parent’s right to visit or contact the child, except as limited by court order;

20 “(c) the parent’s right to consent to the child’s adoption;

21 “(d) the parent’s right to determine the child’s religious affiliation; and

22 “(e) the parent’s responsibility to provide financial, medical, and other support for the  
23 child.

1           “16-2010. Modification of Orders.

2           “(a) An award of custody under this subchapter may be modified or terminated upon the  
3 motion of any party, or on the court’s own motion, upon a determination that there has been a  
4 substantial and material change in circumstances and that the modification or termination is in  
5 the best interests of the child.

6           “(b) When a motion to modify an award of custody under this subchapter is filed, the burden  
7 of proof is on the party seeking a change, and the standard of proof shall be by a preponderance  
8 of the evidence.

9           “16-2011. Jurisdiction.

10          “The court shall retain jurisdiction to enforce, modify, or terminate a custody order issued under  
11 this subchapter until the child reaches 18 years of age.

12          “16-2012. Other actions for custody not abolished, diminished, or pre-empted.

13          “Nothing in this subchapter shall be construed to limit the ability of any person to seek custody  
14 of a child under any other statutory, common law, or equitable cause of action or to preempt the  
15 authority of the court to hear and adjudicate custody claims under the court’s common law or  
16 equitable jurisdiction.”

17          Sec. 3. Fiscal impact statement.

18          The Council adopts the fiscal impact statement in the committee report as the fiscal  
19 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,  
20 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

21          Sec. 4. Effective date.

22          This act shall take effect following approval by the Mayor (or in the event of veto by the  
23 Mayor, action by the Council to override the veto), a 60-day period of Congressional review as

1 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December  
2 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of  
3 Columbia Register.