

AN ACT

*Codification  
District of  
Columbia  
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 16 of the District of Columbia Official Code to provide jurisdiction for the court to hear and determine third-party custody complaints so as to permit certain persons other than parents to seek and obtain custody of a child when the child’s best interests so require, while recognizing and enforcing the constitutional rights of parents, and to establish a process for the court to enter custody orders by consent; to amend the Grandparent Caregivers Pilot Program Establishment Act of 2005 to eliminate the requirement that a grandparent caregiver obtain a court order to be eligible for the Grandparent Caregiver Pilot Program, to revise requirements for the program, and to provide penalties for the making of false statements when applying for subsidies under the program; and to amend Title 21 of the District of Columbia Official Code to establish a custodial power of attorney to help parents who wish to establish consensual temporary arrangements for the care of their children without litigation.

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

Sec. 2. Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding the phrase “8. Third-Party Custody. . . . 16-801” before the phrase “9. Divorce, Annulment, Separation, Support, etc. . . . 16-901”.

(b) A new Chapter 8 is added to read as follows:

“CHAPTER 8  
“THIRD-PARTY CUSTODY.

“Section

- “16-801. Definitions.
- “16-802. Action for custody of child by a third party.
- “16-803. Action for custody of a child by a de facto parent.
- “16-804. Third-party custody orders.
- “16-805. Parental presumption.

- “16-806. Award of custody to third party.
- “16-807. Findings necessary to rebut the parental presumption.
- “16-808. Factors to consider in determining best interests of child.
- “16-809. Pendente lite relief.
- “16-810. Effect of a third-party custody order.
- “16-811. Modification or termination of orders.
- “16-812. Jurisdiction.
- “16-813. Other actions for custody not abolished, diminished, or preempted.
- “§ 16-801. Definitions.

“For the purposes of this chapter, the term:

“(1) “De facto parent” means an individual:

“(A) Who:

“(i) Lived with the child in the same household at the time of the child’s birth or adoption by the child’s parent;

“(ii) Has taken on full and permanent responsibilities as the child’s parent; and

“(iii) Has held himself or herself out as the child’s parent with the agreement of the child’s parent or, if there are 2 parents, both parents; or

“(B) Who:

“(i) Has lived with the child in the same household for at least 10 of the 12 months immediately preceding the filing of the complaint or motion for custody;

“(ii) Has formed a strong emotional bond with the child with the encouragement and intent of the child’s parent that a parent-child relationship form between the child and the third party;

“(iii) Has taken on full and permanent responsibilities as the child’s parent; and

“(iv) Has held himself or herself out as the child’s parent with the agreement of the child’s parent, or if there are 2 parents, both parents.

“(2) “Intrafamily offense” shall have the same meaning as provided in § 16-1001(5).

“(3) “Legal custody” means legal responsibility for a child, including the right to:

“(A) Make decisions regarding the child’s health, education, and general welfare;

“(B) Access the child’s educational, medical, psychological, dental, or other records; and

“(C) Speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

“(4) “Physical custody” means a child’s living arrangements. The term “physical custody” includes a child’s residency or visitation schedule.

New Section  
§ 16-801 - 16-813

“(5) “Third party” means a person other than the child’s parent or de facto parent.  
“§ 16-802. Action for custody of child by a third party.

“(a)(1) A third party may file a complaint for custody of a child or a motion to intervene in any existing action involving custody of the child under any of the following circumstances:

“(A) The parent who is or has been the primary caretaker of the child within the past 3 years consents to the complaint or motion for custody by the third party;

“(B) The third party has:

“(i) Lived in the same household as the child for at least 4 of the 6 months immediately preceding the filing of the complaint or motion for custody, or, if the child is under the age of 6 months, for at least half of the child’s life; and

“(ii) Primarily assumed the duties and obligations for which a parent is legally responsible, including providing the child with food, clothing, shelter, education, financial support, and other care to meet the child’s needs; or

“(C) The third party is living with the child and some exceptional circumstance exists such that relief under this chapter is necessary to prevent harm to the child; provided, that the complaint or motion shall specify in detail why the relief is necessary to prevent harm to the child.

“(2) A third party who is employed by the child’s parent to provide child care duties for that child may not file, under this chapter, a complaint for custody of that child or intervene in any existing action under this chapter involving custody of that child.

“(b)(1) At any time after the filing of a third-party complaint for custody or a motion to intervene, a parent may move to dismiss an action filed by a third party on the grounds that the third party has committed an intrafamily offense against the child, the child’s parent, or any other member of the child’s family, or that the third party does not meet the characteristics set forth in subsection (a) of this section.

“(2) The court shall dismiss the action within 30 days of receiving proof that a court of competent jurisdiction has found that the third party has committed an intrafamily offense against the child, the child’s parent, or any other member of the child’s family.

“(3) Whenever the parent alleges that the plaintiff has committed an intrafamily offense against the child, the child’s parent, or any other member of the child’s family, but no previous adjudication has been issued, the court shall schedule a hearing on the motion to dismiss within 30 days of receiving the allegation.

“(c)(1) The court may decide a third-party complaint or motion to intervene filed under this chapter notwithstanding any other matters pending before the court involving the child, except that any complaint or motion filed under this chapter involving a child who is the subject of a pending action brought under Chapter 23 of Title 16 shall be consolidated with that pending action for resolution by the judicial officer there presiding.

“(2) In a proceeding under this chapter consolidated with a neglect or termination of parental rights proceeding under Chapter 23 of Title 16, the parent of the child is entitled to be represented by counsel at all critical stages of the proceeding, and, if financially

unable to obtain adequate representation, to have counsel appointed in accordance with § 16-2304(b) and the rules established by the Superior Court of the District of Columbia.

“(3) The court, in its discretion, may appoint counsel for the third party.

“§ 16-803. Action for custody of a child by a de facto parent.

“(a) A de facto parent may file a complaint for custody of a child or a motion to intervene in any existing action involving custody of the child.

“(b) An individual who establishes that he or she is a de facto parent by clear and convincing evidence shall be deemed a parent for the purposes of §§ 16-911, 16-914, 16-914.01, and 16-916, and for the purposes of this chapter if a third party is seeking custody of the child of the de facto parent.

“(c)(1) All proceedings involving a parent and a de facto parent, including an action for child support, shall be governed by §§ 16-911, 16-914, 16-914.01, and 16-916.

“(2) A custody proceeding involving a third party and a de facto parent shall be governed by the provisions of this chapter.

“§ 16-804. Third-party custody orders.

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

“(1) Sole legal custody to the third party;

“(2) Sole physical custody to the third party;

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

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

“(5) Any other custody arrangement the court determines is in the best interests of the child.

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

“§ 16-805. Parental presumption.

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

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

“§ 16-806. Award of custody to third party.

“(a) The court shall award custody of the child to the third party upon determining:

“(1) The presumption in favor of parental custody has been rebutted; and

“(2) Custody with the third party is in the child’s best interests.

“(b) The third party seeking custody shall bear the burden of rebutting the parental presumption by clear and convincing evidence.

“(c) In any proceeding under this chapter, the court may appoint counsel for the parent of the child should the court deem it appropriate in the interest of justice. The court also may appoint a guardian ad litem for the child and counsel for the third party.

“(d)(1) Notwithstanding any other provision of this chapter, the court shall enter an order for any custody arrangement that is agreed to by the parents and the proposed custodian or custodians, including custody based on revocable parental consent, unless clear and convincing evidence indicates that the arrangement is not in the best interests of the child.

“(2) If one parent agrees and the other parent does not timely object after having been properly served with process and the proposed arrangement, the arrangement shall be deemed to be agreed to by the parents.

“(3) In any proceeding to assess a proposed arrangement under this subsection, the proposed custodian or custodians shall be full parties.

“(e) If custody is awarded under this chapter to a third party, the court shall issue an order that provides for frequent and continuing contact between the parents and the child and encouraging love, affection, and contact between the child and the parents, unless the court determines that such an order is not in the best interest of the child.

“§ 16-807. Findings necessary to rebut the parental presumption by clear and convincing evidence.

“(a) To determine that the presumption favoring parental custody has been rebutted, the court must find, by clear and convincing evidence, one or more of the following factors:

“(1) That the parents have abandoned the child or are unwilling or unable to care for the child;

“(2) That custody with a parent is or would be detrimental to the physical or emotional well-being of the child; or

“(3) That exceptional circumstances, detailed in writing by the court, support rebuttal of the presumption favoring parental custody.

“(b) The court shall not consider a parent’s lack of financial means in determining whether the presumption favoring parental custody has been rebutted.

“(c) The court shall not use the fact that a parent has been the victim of an intrafamily offense against the parent in determining whether the presumption favoring parental custody has been rebutted.

“(d) If the court concludes that the parental presumption has not been rebutted by clear and convincing evidence, the court shall dismiss the third-party complaint and enter any appropriate judgment in favor of the parent. The court shall only address the factors set forth in § 16-808 once the presumption favoring parental custody has been rebutted.

“§ 16-808. Factors to consider in determining best interests of child.

“(a) In determining whether custody with a third party, pursuant to this chapter, is in the child’s best interests, the court shall consider all relevant factors, including:

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

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

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

“(4) To the extent feasible, the child’s opinion of his or her own best interests in the matter.

“(b) There shall be a rebuttable presumption that granting custody to a third party who has committed an intrafamily offense is not in the best interest of the child.

“§ 16-809. Pendente lite relief.

“(a)(1) During the pendency of any proceeding under this chapter, the court may determine, in accordance with the provisions of this chapter, the custody of the child pending final determination of that issue.

“(2) The pendente lite hearing shall be held no later than 30 days after a party requests a pendente lite custody determination by the court.

“(3) The court may enter any appropriate pendente lite relief pursuant to the provisions of this chapter.

“(4) Except when all parties consent to the pendente lite order, the court shall issue written findings.

“(b)(1) Unless the parties agree otherwise, any pendente lite order shall include a date certain for trial on the complaint or motion, not to exceed 120 days from issuance of the pendente lite order.

“(2) Extensions of the trial date will not be routinely granted. Only upon motion of a party or on the court’s own motion and a showing of good cause may the trial date be extended. Any order extending the trial date shall be accompanied by written findings.

“§ 16-810. Effect of a third-party custody order.

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

“(1) The right of the child to inherit from his or her parent;

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

“(3) The parent’s right to consent to the child’s adoption;

“(4) The parent’s right to determine the child’s religious affiliation; and

“(5) The parent’s responsibility to provide financial, medical, and other support for the child.

“§ 16-811. Modification or termination of orders.

“(a) An award of custody to a third party under this chapter may be modified or terminated upon the motion of any party, or on the court’s own motion, upon a determination

that there has been a substantial and material change in circumstances and that the modification or termination is in the best interests of the child.

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

“(c) Any award of custody based on revocable parental consent entered pursuant to the agreement of all parties under § 16-806(d) shall be immediately vacated and of no further effect upon the filing of a revocation by the consenting parent or the third party.

“§ 16-812. Jurisdiction.

“The court shall retain jurisdiction to enforce, modify, or terminate a custody order issued under this chapter, subject to the provisions of Chapter 46 of this title, until the child reaches 18 years of age.

“§ 16-813. Other actions for custody not abolished, diminished, or preempted.

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

Sec. 3. The Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.01 *et seq.*), is amended as follows:

(a) Section 103 (D.C. Official Code § 4-251.03) is amended as follows:

Amend  
§ 4-251.03

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

“(1) The grandparent has been the child’s primary caregiver for at least the previous 6 months.”.

(B) Paragraph (3) is amended to read as follows:

“(3) The child’s parent has not resided in the grandparent’s home for at least the previous 6 months; provided, that a parent may reside in the home without disqualifying the grandparent from receiving a subsidy if:

“(A) The parent has designated the grandparent to be the child’s standby guardian pursuant to Chapter 48 of Title 16;

“(B) The parent is a minor enrolled in school; or

“(C) The parent is a minor with a medically verifiable disability under criteria that shall be prescribed by the Mayor pursuant to section 106.”.

(C) A new paragraph (8A) is added to read as follows:

“(8A) The grandparent is not currently receiving a guardianship or adoption subsidy for the child;”.

(2) A new subsection (f) is added to read as follows:

“(f) Any statement under this section made with knowledge that the information set forth therein is false shall be subject to prosecution as a false statement under section 404(a) of the

District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405(a)).”

(b) Section 104 (D.C. Official Code § 4-251.04) is amended as follows:

Amend  
§ 4-251.04

(1) Subsection (b) is amended by striking the phrase “no less than the regular daily rate of the subsidy for a long-term permanent guardianship” and inserting the phrase “within 5% (no less than 95% and no more than 105%) of the regular daily rate of the subsidy for a long-term permanent Level 1 guardianship” in its place.

(2) Subsection (c) is amended by striking the phrase “receives from TANF” and inserting the phrase “receives as TANF or Supplemental Security Income” in its place.

Sec. 4. Title 21 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding at the end the following:

“23. Custodial Power of Attorney . . . . . 21-2301”.

(b) A new Chapter 23 is added to read as follows:

“CHAPTER 23  
“CUSTODIAL POWER OF ATTORNEY.

“Section

“21-2301. Custodial power of attorney.

New Section  
§ 21-2301

“§ 21-2301. Custodial power of attorney.

“(a) The parent of a child may create a revocable custodial power of attorney that grants to another person any of the parent’s rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to:

“(1) Enroll the child in school;

“(2) Obtain from the school educational and behavioral information about the child;

“(3) Consent to all school-related matters regarding the child; and

“(4) Consent to medical, psychological, or dental treatment for the child.

“(b) The custodial power of attorney may not grant authority to consent to the marriage or adoption of the child.

“(c) The custodial power of attorney shall not affect the rights of the parent of the child in any proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child.”.

Sec. 5. Fiscal impact statement.

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



Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia