



General Assembly

January Session, 2005

Raised Bill No. 1120

LCO No. 3675

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Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING JOINT LEGAL AND PHYSICAL CUSTODY
AND EQUAL PARENTAL RIGHTS IN CUSTODY DETERMINATIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-56 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) In any controversy before the Superior Court as to the custody or
4 care of minor children, and at any time after the return day of any
5 complaint under section 46b-45, the court may at any time make or
6 modify any proper order regarding the education and support of the
7 children and of care, custody and visitation if it has jurisdiction under
8 the provisions of chapter 815p. Subject to the provisions of subsection
9 (b) of this section and section 46b-56a, as amended by this act, the
10 court may assign the custody of any child to the parents jointly, to
11 either parent or to a third party, according to its best judgment upon
12 the facts of the case and subject to such conditions and limitations as it
13 deems equitable. The court may also make any order granting the right
14 of visitation of any child to a third party, including, but not limited to,
15 grandparents.

16 (b) In making or modifying any order with respect to custody or
17 visitation, the court shall (1) be guided by the best interests of the
18 child, giving consideration to the constitutionally protected parental
19 rights of both parents and the wishes of the child if the child is of
20 sufficient age and capable of forming an intelligent preference,
21 provided, in making the initial order, the court may take into
22 consideration the causes for dissolution of the marriage or legal
23 separation if such causes are relevant in a determination of the best
24 interests of the child, and (2) consider whether the party satisfactorily
25 completed participation in a parenting education program established
26 pursuant to section 46b-69b. Upon the issuance of any order assigning
27 custody of the child to the Commissioner of Children and Families, or
28 not later than sixty days after the issuance of such order, the court shall
29 make a determination whether the Department of Children and
30 Families made reasonable efforts to keep the child with his or her
31 parents prior to the issuance of such order and, if such efforts were not
32 made, whether such reasonable efforts were not possible, taking into
33 consideration the [child's] best interests of the child, including the
34 child's health and safety, and the constitutionally protected parental
35 rights of both parents.

36 (c) In determining whether a child is in need of support and, if in
37 need, the respective abilities of the parents to provide support, the
38 court shall take into consideration all the factors enumerated in section
39 46b-84.

40 (d) When the court is not sitting, any judge of the court may make
41 any order in the cause which the court might make under subsection
42 (a) of this section, including orders of injunction, prior to any action in
43 the cause by the court.

44 (e) A parent not granted custody of a minor child shall not be
45 denied the right of access to the academic, medical, hospital or other
46 health records of such minor child unless otherwise ordered by the
47 court for good cause shown.

48 (f) Notwithstanding the provisions of subsection (b) of this section,
49 when a motion for modification of custody or visitation is pending
50 before the court or has been decided by the court and the investigation
51 ordered by the court pursuant to section 46b-6 recommends
52 psychiatric or psychological therapy for a child, and such therapy
53 would, in the court's opinion, be in the best interests of the child and
54 aid the child's response to a modification, the court may order such
55 therapy and reserve judgment on the motion for modification.

56 (g) As part of a decision concerning custody or visitation, the court
57 may order either parent or both of the parents and any child of such
58 parents to participate in counseling and drug or alcohol screening,
59 provided such participation is in the best ~~[interest]~~ interests of the
60 child and consistent with the constitutionally protected parental rights
61 of both parents.

62 Sec. 2. Section 46b-56a of the general statutes is repealed and the
63 following is substituted in lieu thereof (*Effective October 1, 2005*):

64 (a) For the purposes of this section, "joint custody" means an order
65 awarding legal custody of the minor child to both parents, providing
66 for joint decision-making by the parents and ~~[providing that]~~ awarding
67 equal physical custody [shall be shared by] and companionship time to
68 the parents [in such a way] so as to assure the child of continuing
69 contact with both parents. [The court may award joint legal custody
70 without awarding joint physical custody where the parents have
71 agreed to merely joint legal custody.]

72 (b) There shall be a presumption, affecting the burden of proof, that
73 joint custody in accordance with subsection (d) of this section is in the
74 best interests of a minor child [where the parents have agreed to an
75 award of joint custody or so agree in open court at a hearing] for the
76 purpose of determining the custody of the minor child or children of
77 the marriage. Such presumption may be overcome only upon proof by
78 a preponderance of the evidence that joint custody is harmful to such
79 minor child or children. If, based on such evidence, the court declines

80 to enter an order awarding joint custody pursuant to this subsection,
81 the court shall state in its decision the reasons for denial of an award of
82 joint custody.

83 (c) If only one parent seeks an order of joint custody upon a motion
84 duly made, the court may order both parties to submit to conciliation
85 at their own expense with the costs of such conciliation to be borne by
86 the parties as the court directs according to each party's ability to pay.

87 (d) In any proceeding for annulment, dissolution of marriage or
88 legal separation, each parent of a minor child shall retain his or her
89 legal right to custody of the child unless the court finds by clear and
90 convincing evidence that the parent is unsuitable because he or she is
91 unfit, unwilling or unable to care for the child or the parent has
92 forfeited his or her legal right to custody under subsection (e) of this
93 section. Absent any such finding of parental unsuitability or any such
94 forfeiture, each parent shall retain equal physical custody of and
95 companionship time with the child, except that the court may award
96 joint legal custody without awarding such equal physical custody and
97 companionship time only if (1) the parents have agreed in writing to
98 such arrangement, or (2) the court finds by a preponderance of the
99 evidence that awarding equal physical custody and companionship
100 time is harmful to the child. Subject to the provisions of this
101 subsection: (A) If both parents agree to equally share in the physical
102 custody of and companionship time with the child, such agreement
103 shall be reduced to writing and shall be accepted by the court; or (B) if
104 one or both parents do not agree to equally share in the physical
105 custody of and companionship time with the child, the court shall
106 order an equal alternating physical custody and companionship time
107 schedule.

108 (e) Notwithstanding any provision of law, if, after notice and
109 hearing, the court finds by clear and convincing evidence that a parent
110 has knowingly made a false allegation of parental unsuitability against
111 the other parent for the purposes of subsection (d) of this section, the

112 parent who has knowingly made such false allegation shall forfeit his
113 or her legal right to custody of the minor child and the court shall
114 award legal and physical custody of the child to the other parent. The
115 court shall provide the parent who has knowingly made such false
116 allegation with an opportunity to participate in mediation for the
117 purpose of reaching an agreement concerning a schedule for
118 companionship time with the child. Such parent may petition the court
119 for the restoration of his or her legal right to custody of the minor child
120 not earlier than two years from the date of the order awarding legal
121 and physical custody of the child to the other parent. The court may
122 grant such petition and modify such order if the court determines that
123 such action is in the best interests of the child.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	46b-56
Sec. 2	<i>October 1, 2005</i>	46b-56a

Statement of Purpose:

To ensure equal rights for both parents in the making of custody determinations in proceedings for annulment, dissolution of marriage or legal separation.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]