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4 Councilmember Kwame R. Brown

Councilmember David A. Catania

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9 Councilmember Kathy Patterson

Councilmember Carol Schwartz

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12 A BILL

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16 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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20 Councilmembers Kwame R. Brown, David A. Catania, Kathy Patterson and Carol Schwartz
21 introduced the following bill, which was referred to the Committee on

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24 To amend section 16-914 of the District of Columbia Official Code to provide that in custody
25 proceedings where there is a finding that domestic violence occurred between the parents,
26 there is a rebuttable presumption that granting sole legal and physical custody to the
27 parent who did not commit the offense and is not the primary aggressor is in the best
28 interests of the child or children.
29

30 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
31 act may be cited as the “Child Custody Domestic Violence Amendment Act of 2005”.

32 Sec. 2. Section 16-914(a)(2) is amended to read as follows:

33 “(2)(A) Unless the court determines that it is not in the best interest of the child, the court
34 may issue an order that provides for frequent and continuing contact between each parent and the
35 minor child or children and for the sharing of responsibilities of child-rearing and encouraging
36 the love, affection, and contact between the minor child or children and the parents regardless of
37 marital status.

1 “(B) There shall be a rebuttable presumption that joint custody is in the best interest of
2 the child or children, except in instances where a judicial officer has found by a preponderance
3 of the evidence that an intrafamily offense as defined in D.C. Official Code section 16-1001(5),
4 an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and
5 Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-
6 1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect
7 Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C.
8 Official Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code
9 section 16-1021 through section 16-1026 has occurred.

10 “(C)(i) If a judicial officer finds by a preponderance of the evidence that an intrafamily
11 offense as defined in D.C. Official Code section 16-1001(5), an instance of child abuse as
12 defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective
13 September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child
14 neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund
15 Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Official Code § 4-1341.01), or
16 where parental kidnapping as defined in D.C. Official Code section 16-1021 through section
17 16-1026 has occurred, there shall be a rebuttable presumption that granting sole legal and
18 physical custody to the parent who (I) did not commit the offense, and (II) is not the primary
19 aggressor, is in the best interests of the child or children.

20 “(ii) In identifying the primary aggressor, the court shall consider (I) the intent of
21 the law to protect victims of domestic violence from continuing abuse, (II) the threats creating
22 fear of physical injury, (III) the history of domestic violence between the persons involved, and
23 (IV) whether either person involved acted in self-defense.

1 “(iii) For the purposes of this subparagraph, “primary aggressor” means the
2 person who is the most significant, rather than the first, aggressor.

3 “(D) If the judicial officer awards custody based on the finding by a preponderance of
4 evidence that an intrafamily offense has occurred, visitation may be awarded to the offending
5 parent or primary aggressor consistent with the provisions of subsection (a-1) of this section.”.

6 Sec. 3. Fiscal impact statement.

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

10 Sec. 4. Effective date.

11 This act shall take effect following approval by the Mayor (or in the event of veto by the
12 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
13 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
14 24, 1973 (87 Stat. 813; D.C. Code § 1-206.02 (c)(1)), and publication in the District of Columbia
15 Register.