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## JOINT LEGAL AND PHYSICAL CHILD CUSTODY

House Bill 4664

Sponsor: Rep. Andrew Raczkowski

Committee: Civil Law and Judiciary

Complete to 9-28-01

### A SUMMARY OF HOUSE BILL 4664 AS INTRODUCED 4-24-01

House Bill 4664 would amend the Child Custody Act. Under the bill, it would be assumed that it would be in a child's best interest that the parents be awarded both joint legal and joint physical custody. If a parent attempted to rebut the presumption of joint legal and joint physical custody, the court would presume that each factor in determining the "best interests of the child", as defined in the act, weighed evenly for both parents unless proven otherwise by clear and convincing evidence. If this presumption were rebutted and the court did not grant a child's parents both joint legal and joint physical custody, the court would state on record the reasons for not granting either joint legal custody or joint physical custody. In instances where one party was unwilling to cooperate with the other party in terms of parenting decisions and material issues affecting the well being of the child for no or little meritorious reason, the bill would require the court to consider the awarding sole legal and physical custody to the party more inclined to cooperate. In addition, the bill would require the court to consider awarding joint legal and joint physical custody in cases between a parent and a third person, or in cases between third persons. Under current law, the parents are advised of joint custody and the court is required to consider joint custody at the request of either parent.

Under the bill, if a court awarded joint legal and physical custody, the court would be required to include in its award a statement regarding the physical custody of the child that specifies that the child would reside alternately, for specific and substantially equal periods of time, with each parent. Currently, the court may include a statement regarding when a child shall reside with each parent, or the court may provide that physical custody be shared in a manner that assures that the child continues contact with both parents.

Under current law, if joint custody is awarded, each parent is responsible for child support based in the needs of the child and the actual resources of the parent. Also, the court may order modified support payments for a portion of housing expenses if a parent would be otherwise unable to provide adequate housing for the child. The bill would add that support payments would not be modified based on housing expenses unless the parent receiving support proved by clear and convincing evidence that he or she was initiating aggressive means to alleviate the unequal financial status.

Currently, as used in this provision, "joint custody" means a court order that specifies that the child reside alternately for specific periods of time with each parent, and/or that parents share decision making authority in decisions affecting the welfare of the child. The bill would define "joint legal custody" to mean a court order that specifies that the parents, and third persons, if any, share decision making authority in decisions affecting the welfare of the child. The bill

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would define “joint physical custody” to mean a court order that specifies that the child reside alternately for specific and substantially equal periods of time with each parent, or any third person. The bill would amend all references in the section of “joint custody” to “joint legal and joint physical custody”.

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Analyst: M. Wolf

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.