



D I S T R I C T O F C O L U M B I A B A R  
*Family Law Section*

1250 H Street NW  
Sixth Floor  
Washington, DC  
20005-5937  
202-626-3463  
FAX 202-626-3453  
[www.dcbbar.org/sections](http://www.dcbbar.org/sections)

*Sections EventLine*  
202-626-3455

*Steering Committee*  
Robert C. Liotta, Co-Chair  
Margaret J. McKinney,  
Co-Chair  
Linda A. Delaney  
Garrett L. Lee  
Nancy A. Lopez  
Kala Shah Surprenant  
Dawn A. Wilson

Nancy Duff Campbell  
*Board of Governors Liaison*

*Committees*  
Community Outreach  
Legislation and Court Rules  
Public Affairs  
Letter  
Programs

John W. Niels, Jr.  
*D.C. Bar President*

John A. Payton  
*D.C. Bar President-elect*

John D. Graubert  
*Chair, Council on Sections*

John P. Mahoney  
*Vice Chair, Council on Sections*

Katherine A. Mazzaferri  
*D.C. Bar Executive Director*

Cynthia D. Hill  
*D.C. Bar Assistant Executive  
Director, Programs*

Charles E. Lorenzetti  
*D.C. Bar Assistant Executive  
Director, Administration  
and Finance*

Carol Ann Cunningham  
*D.C. Bar Sections Manager*

**SUMMARY OF PUBLIC STATEMENT**

The public statement consists of a redrafting of D.C. Code Sections 16-901 through 16-924. The most substantive changes appear in 16-910 (Assignment and equitable distribution of property), 16-911 (Pendente lite relief), 16-912 (Alimony), 16-916.1 (Child Support Guideline), and 16-920 (Effective date of decree or judgment for annulment or absolute divorce). There are changes in other sections which are not intended to substantively change the law but rather to resolve ambiguities and inconsistencies and fill in unintended gaps. This is especially true of the merger of all the custody provisions into Section §16-913.

The Family Law Section Steering Committee intends to submit the proposed revisions to various Members of the D.C. Council with a request to sponsor a Bill to enact the revisions. The views expressed herein represent only those of the Family Law Section<sup>1</sup> of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

---

<sup>1</sup> These revisions were drafted primarily by Robert Case Liotta as Chair of the Legislation and Court Rules Committee of the Family Law Section Steering Committee except for the Child Support Guideline section, which was drafted by Margaret J. McKinney, Co-Chair of the Family Law Section Steering Committee. The other Members of the Steering Committee involved in developing these revisions were Dawn A. Wilson, Claudia A. Pott, Kala Shah Surprenant, Eleanor Nace, Garret L. Lee, Linda A. Delaney, Nancy A. Lopez and Christopher J. Herrling.

## PUBLIC STATEMENT OF D.C. BAR, FAMILY LAW SECTION

The Family Law Section Steering Committee proposes to present the District of Columbia Council with the following proposed revisions to D.C. Code Sections 16-901 through 16-924 for enactment. The views expressed herein represent only those of the Family Law Section<sup>1</sup> of the D.C. Bar and not those of the D.C. Bar or its Board of Governors.

### D.C. CODE SECTIONS

#### **16-901. Definitions.**

No change.

#### **16-902. Residence requirements.**

No change.

#### **16-903. Decree annulling marriage.**

No change.

#### **16-904. Grounds for divorce, legal separation, and annulment.**

(a) No change

(b) No change

(1) no change

(2) no change

(3) deleted

(4) deleted

(c) No change

(d) No change

---

<sup>1</sup> These revisions were drafted primarily by Robert Case Liotta as Chair of the Legislation and Court Rules Committee of the Family Law Section Steering Committee except for the Child Support Guideline section, which was drafted by Margaret J. McKinney, Co-Chair of the Family Law Section Steering Committee. The other Members of the Steering Committee involved in developing these revisions were Dawn A. Wilson, Claudia A. Pott, Kala Shah Surprenant, Eleanor Nace, Garret L. Lee, Linda A. Delaney, Nancy A. Lopez and Christopher J. Herrling.

**16-905. Revocation and enlargement of decree of legal separation.**

Subparagraph (a) should be clarified by removing the term “divorce from bed and board” and replacing it with “legal separation from bed and board”. The term “divorce from bed and board” appears nowhere else and is confusing.

**16-906. Causes for absolute divorce arising after decree for separation.**

The words “divorce from bed and board” should be changed to “legal separation from bed and board”.

**16-907. Parent and child relationship defined.**

No change.

**16-908. Relationship not dependent on marriage.**

No change.

**16-909. Proof of child’s relationship to mother and father.**

No change.

**16-909.1. Establishment of paternity by voluntary acknowledgment and based on genetic test results.**

No change.

**16-909.2 Full faith and credit to paternity determinations by other states.**

No change.

**16-910. Change title to read: Assignment and equitable distribution of property.**

Upon the entry of a final decree of legal separation, annulment or divorce, in the absence of a valid ante-nuptial or post-nuptial agreement resolving all issues related to the property of the parties the Court shall:

- (a) No change

(b) Value and distribute all other property and debt accumulated during the marriage, regardless of whether title is held individually or by the parties in a form of joint tenancy or tenancy by the entireties, in a manner that is equitable, just and reasonable, after considering all relevant factors including, but not limited to: the duration of the marriage; the age, health, occupation, amount and sources of income, vocational skills, employability, assets, debts, and needs of each of the parties; provisions for the custody of minor children; whether the distribution is in lieu of or in addition to alimony; a party's obligation from a prior marriage or for other children; the opportunity of each for future acquisition of assets and income; each party's contribution as a homemaker or otherwise to the family unit; a party's contribution to the education of the other party which enhanced the other's earning ability; a party's increase or decrease in income as a result of the marriage and/or duties of homemaking and childcare. The court shall also consider each party's contribution to the acquisition, preservation, appreciation, dissipation or depreciation in value of the assets which are subject to distribution; the taxability of these assets and whether the asset was acquired or the debt incurred after separation. The court, in valuing the assets subject to distribution, shall consider the effects of taxation on the value.

(c) Add a subsection (c) as follows: "If appropriate, the Court may retain a spouse's right of dower in the other spouses estate."

**16-911.** Change title to read: **Pendente lite relief.**

(a) No change.

Change to read as follows:

(1) require the husband or wife to pay *pendente lite* alimony to the other spouse; *pendente lite* child support for their minor children committed to the other spouses care; and suit

money, including counsel fees, to enable such other spouse to conduct the case. The court may enforce any such order by attachment, garnishment and/or imprisonment for disobedience. In determining *pendente lite* alimony for a spouse the Court shall consider the factors set forth in §16-912(d) and may make an award of *pendente lite* alimony retroactive to the date of the filing of the pleading that requests alimony.

(2) No change.

(3) No change.

(4) No change.

(5) Change to read as follows:(5) determine who shall have the care and custody of a minor child or children pending final determination in accordance with §16-913.

(b) No change.

(c) No change.

(d) The court may order any other appropriate *pendente lite* relief.

**16-912** Change title to: **Alimony**  
Substitute the following:

(a) When a divorce or legal separation is granted the court may require either party to pay alimony to the other party if it seems just and proper.

(b) Such award of alimony may be indefinite or term-limited and structured as appropriate to the facts. The court shall determine the amount and the time period for the award of alimony.

(c) An award of alimony may be retroactive to the date of the filing of the pleading that requests alimony.

(d) In making the determination, the court shall consider all the factors necessary for a fair and equitable award, including but not limited to:

- (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to secure suitable employment;
- (3) the standard of living that the parties established during their marriage but giving consideration to the fact that there will be two households to maintain;
- (4) the duration of the marriage;
- (5) the circumstances which contributed to the estrangement of the parties;
- (6) the age of each party;
- (7) the physical and mental condition of each party;
- (8) the ability of the party from whom alimony is sought to meet his or her needs while meeting the needs of the other party;
- (9) the financial needs and financial resources of each party including:
  - (i) income;
  - (ii) income from assets, both marital and non-marital;
  - (iii) potential income which may be imputed to non-income producing assets of a party;
  - (iv) any previous award of child support in this case;
  - (v) the financial obligations of each party;
  - (vi) the right of a party to receive retirement benefits.
  - (vii) the taxability or non-taxability of income.

**§16-913.** Change title to: **Custody of children.**

As a new section combine the custody provisions of §16-911 and §16-914 as follows:

**§16-913. Custody of children.**

(a) In any proceeding in which the custody of a child is raised as an issue, whether or not within the context of a divorce, the best interest of the child shall be the primary consideration. The race, color, national origin, political affiliation, sex or sexual orientation, of a party, in and of itself, shall not be a conclusive consideration.

(b) The court will make a determination as to the legal custody and the physical custody of a child. Legal custody includes the legal responsibility for the child and the right to make decisions regarding a child's health, education and general welfare. Physical custody of a child is a determination of a child's physical residency schedule. A custody order may include:

(1) sole legal custody;

(2) sole physical custody;

(3) joint legal custody;

(4) joint physical custody; or

(5) any other custody arrangement the court may determine is in the best interest of the child.

(c) Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children and for the sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between the minor child and the parents regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in D.C. Code §16-1001(5), an instance of child abuse as

defined in §102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Code §6-2101), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993(D.C. Law 10-56; D.C. Code §6-2131), or where parental kidnapping as defined in D.C. Code §16-1021 through §1026 has occurred. There shall be a rebuttable presumption that joint custody is not in the best interest of the child if a judicial officer finds by a preponderance of the evidence that an intrafamily offense as defined in D.C. Code §16-1001(5), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Code §6-2101), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Code §6-2131), or where parental kidnapping as defined in D.C. Code §16-1021 through §16-1026 has occurred.

(d) In determining the care and custody of a child, the court shall consider all relevant factors, including, but not limited to:

- (1) the wishes of the child as to his or her custodian, where practicable;
- (2) the wishes of the child's parent or parents as to the child's custody;
- (3) the interaction and interrelationship of the child with his or parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest;
- (4) the child's adjustment to his or her home, school, and community;
- (5) the mental and physical health of all individuals involved;
- (6) evidence of an intrafamily offense as defined in §16-1001(5);



(7) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;

(8) the willingness of the parents to share custody;

(9) the prior involvement of each parent in the child's life;

(10) the potential disruption of the child's social and school life;

(11) the geographic proximity of the parental homes as this relates to the practical considerations of the child's residential schedule;

(12) the demands of parental employment;

(13) the age and number of children;

(14) the sincerity of each parent's request;

(15) the parent's ability to financially support a joint custody arrangement;

(16) the impact on Aid to Families with Dependent Children and medical assistance; and

(17) the benefit to the parents.

(e) For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of

proving that visitation will not endanger the child or significantly impair the child's emotional development.

(f) The mere enactment of the Joint Custody of Children Act of 1996 does not, in and of itself, constitute a substantial and material change in circumstances and, therefore, may not constitute the sole basis for modifying or terminating a custody award.

(g) Notice of a custody proceeding shall be given to the child's parents, guardian, or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party. (Dec. 23, 1963, 77 Stat. 562, Pub.L. 88-241, §1; 1973 Ed., §16-914; Oct. 1, 1976, D.C. Law 1-87; §17,23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title 1, §109, 23 DCR 8737; Aug. 25, 1994, D.C. Law 10-154, §2(b), 41 DCR 4870; Apr. 18, 1996, D.C. Law 11-112, §2(b), 43 DCR 574.)

(h) In any custody proceeding under this chapter, the court may order each parent to submit a detailed parenting plan which shall delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interest of the minor child or children. The parenting plan may include, but shall not be limited to, provisions for:

- (1) the residence of the child or children;
- (2) the financial support based on the needs of the child and the actual resources of the parent;
- (3) visitation;
- (4) holidays, birthdays, and vacation visitation;
- (5) transportation of the child between the residences;
- (6) education;

(7) religious training, if any;

(8) access to the child's educational, medical, psychiatric, and dental treatment decisions;

(9) except in emergencies, the responsibility for medical, psychiatric, and dental treatment decisions;

(10) communication between the child and the parents; and

(11) resolving conflict such as a recognized family counseling or mediation service before application to the court to resolve a conflict.

(i) The court, in making its custody determination;

(1) Shall consider the parenting plans submitted by the parents in evaluating the factors set forth in subsection (h) of this section in fashioning a custody order;

(2) Shall designate the parent(s) who will make the major decisions concerning the health, safety, and welfare of the child that need immediate attention;

(3) May order either or both parents to attend parenting classes.

(j) Joint custody shall not eliminate the responsibility for child support in accordance with the applicable child support guideline as set forth in §16-916.1.

(k) (1) An award of custody may be modified or terminated upon the motion of one or both parents, or on the court's own motion, upon a determination that there has been a substantial and material change in circumstances and that such modification or termination is in the best interest of the child.

(2) When a motion to modify custody 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.

(3) The provisions of this act shall apply to motions to modify or terminate any award of custody filed after the enactment date of this act.

(l) The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests.

(m) The court shall enter an order for any custody arrangement which is agreed to by both parents unless clear and convincing evidence indicates that such arrangement is not in the best interest of the minor child.

(n) An objection by one parent to any custody arrangement shall not be the sole basis for refusing the entry of an order that the court determines is in the best interest of the minor child.

(o) The court shall place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents.

**16-914. Change title to read: Retention of jurisdiction as to alimony, custody of children and child support.**

(a)(1) After the issuance of a judgment, decree or order granting custody, child support or alimony the court retains jurisdiction for the entry of future orders modifying or terminating the initial judgment, decree or order to the extent such retention of jurisdiction does not contravene other statutory provisions.

Delete remainder of this section. These custody provisions are now incorporated in the new §16-913.

**16-915. Change of name on divorce.**

No change.

**16-916. Maintenance of spouse and ;minor children; maintenance of former spouse; maintenance of minor children; enforcement.**

No change.

**16-916.1. Child Support Guideline.**

(a) Replace subsection (a)(17) with the following: Spousal support received by either party (with a deduction from gross income for spousal support paid by either party);

(h) Add the following clause to the beginning of subsection (h)(2): In order to receive credit for the cost of health insurance,

(l) Delete subsections (l)(2) and (l)(3).

(m) Add the following as subsection (m)(7): All or part of either party's income is not subject to income tax, thereby increasing the party's disposable income.

(n) Add the following at the end of the first sentence of subsection (n): In addition to any award of child support, the judicial officer shall have the authority to order either parent to pay a portion of the following expenses for the child: extracurricular activities and lessons, visitation transportation, private school tuition, school fees, day-care, camp, unreimbursed or uninsured health care expenses, and other such expenses.

(s) Add the following as subsection (s): Upon a substantial or material change of circumstances, including an increase or decrease in one or both party's income, the court may modify any provision of a deed, agreement, consent order or settlement with respect to the support of any minor child, without regard to whether said agreement is incorporated or merged in a court order. This subsection (s) shall apply only to deeds, agreements, consent orders or settlements entered into after the effective date of this amendment, effective \_\_\_\_\_, 2001. The procedure for any such amendment shall be as set forth in subsection 16-916.1(o)(3)-(o)(10).

(t) Add the following as subsection (t): For the purpose of this section, "day-care" cost shall include work- or education related childcare expenses, including camp and before- or after-

school care, and shall be determined by actual costs incurred unless the court determines that the actual family experience is not in the best interest of the child.

(u) Add the following as subsection (u): If an order or agreement providing for support of a child pursuant to this subsection does not set forth a date on which the support commences, the support shall be deemed to commence on the date the order or agreement was entered.

**16-916.2. Child Support Guideline Commission.**

No change.

**16-916.3. Proceedings in which child support matters may be considered.**

No change.

**16-917. Co-respondents as defendants, service of process.**

Deleted.

**16-918. Appointment of counsel; compensation; termination of appointment.**

No change.

**16-919. Proof required on default or admission of defendant.**

No change.

**16-920. Effective date of decree or judgment for annulment or absolute divorce.**

Change to read as follows: A decree or judgment annulling or dissolving a marriage, or granting an absolute divorce shall become effective to dissolve the bonds of matrimony thirty days after the docketing of the decree or judgment unless a stay is granted by the Superior Court or the District of Columbia Court of Appeals. If the parties desire immediate finality they may file a joint waiver of right to appeal which will make the decree or judgment final upon docketing of the joint waiver.

**16-921. Validity of marriage; action to determine.**

No change.

**16-922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902.**

No change.

**16-923. Abolition of action for breach of promise, alienation of affections, and criminal conversation.**

No change.

**16-924. Change title to read: Expedited judicial hearing for child support.**

No change.