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## DE FACTO CUSTODIANS IN CHILD CUSTODY PROCEEDINGS

House Bill 5575  
Sponsor: Rep. Doug Spade  
Committee: Family and Children  
Services

Complete to 2-11-02

### A SUMMARY OF HOUSE BILL 5575 AS INTRODUCED 1-29-02

House Bill 5575 would define and add provisions to the Child Custody Act of 1970 pertaining to de facto custodians. The bill defines a “de facto custodian” to mean an individual who has been the primary caregiver for, and financial support of, a child who has resided with the individual for at least six months if the child is less than three years old, or for at least one year if the child is at least three years old. De facto custodian would not include an individual who cares for a child in a foster home. Further, the bill specifies that the period of time after a child custody proceeding is commenced would not be included in determining the length of time a child has been under the care of a de facto custodian.

The act lists several factors used to determine the “best interests of a child.” The bill would revise the term “child’s best interests” and add to that list whether there was evidence that at least one de facto custodian has cared for the child. If the court found by clear and convincing evidence that a de facto custodian had cared for the child, the court would have to also consider, evaluate, and determine the following factors when determining the child’s best interests:

- Each de facto custodian’s wishes.
- The extent to which each de facto custodian has cared for the child.
- The intent of the child’s parent in leaving the child with the de facto custodian.
- The circumstances under which the child was allowed to remain in the custody of a de facto custodian, including whether the child was in the de facto custodian’s custody to allow a parent who is now seeking custody to work, seek employment, or attend school.

If the court determines that the child is in the custody of a de facto custodian, the court would have to make that de facto custodian a party to the child custody proceeding.

Under the act, in a custody dispute between parents, they are advised of joint custody. The court determines whether joint custody is in the best interests of the child by considering the factors listed in the act (which includes such factors as a parent’s ability to provide the child with food, clothing and medical care), and whether the parents will be able to cooperate and generally agree with one another regarding important decisions affecting the child’s welfare. The bill would add that the court also consider the factors listed above concerning a de facto custodian,

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and whether a parent or the parents, and the de facto custodian can agree on the decisions affecting the child's welfare.

Under the bill, if a de facto custodian who is a party to a child custody proceeding objects to an award of joint custody to only the parents, the court could not award joint custody, but would have to determine the child's best interests. If a de facto custodian is to share joint custody with one or both parents, the court would have to consider the de facto custodian in its determination of when the child would reside with each party, or when determining that physical custody be shared to ensure that the child continues contact with each party.

The bill would also add de facto custodians to provisions concerning child support; i.e., a de facto custodian could be awarded child support.

The bill would also amend the definition of "joint custody" to include language pertaining to a de facto custodian. Under the bill, joint custody would mean a court order that specifies one or both of the following:

- That the child reside alternately for specific periods of time with each parent, or for specific periods with a parent or each parent and one or more de facto custodians.
- That the parents, or a parent or the parents and one or more de facto custodians, share decision making authority as to the important decisions affecting the child's welfare.

MCL 722.22 et al.

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.