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Special Proceedings MIS Office Normal JOJO 2 71 2002-01-15T02:38:00Z 2002-01-15T02:38:00Z 3 940 5363  
Supreme Court of the Philippines 44 10 6586 9.2720 110

**V. CUSTODY OF MINORS****1. Jurisdiction**

A petition for the custody of minors is also provided in Section 1, Rule 99 which provides for a petition for adoption. The petition for custody of children is now within the exclusive original jurisdiction of Family Courts, as provided in Sec. 5(b), Family Courts Act of 1997, or Rep. Act No. 8369.

**2. Children Under Seven Years of Age**

Under Article 213, second paragraph Family Code, no child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise. Under Pres.Decree 603, Art. 17, the age of the child was five years of age, reduced from the Civil Code provision of seven years of age. Now it is back to seven years of age under the Family Code.

1. Formerly, under the Civil Code, the provision was that no mother should be separated from her child under seven years of age. 185The change emphasizes the fact that it is the welfare of the child that is paramount.

2. This rule, however, is not absolute. 186

**3. Child Abuse**

Complaints on cases of unlawful acts committed against children under the Child Abuse Act may be filed by (a) the offended party, (b) parents or guardians, (c) ascendant or collateral relative within the third degree of consanguinity; (d) officer, (e) social worker or representative of a licensed child-caring institution; (f) officer or social worker of the DSWD; (g) barangay chairman, or (g) at least three (3) concerned responsible citizens where the violation occurred. 187

**1. Protective Custody**

The child shall be immediately placed under the protective custody of the DSWD pursuant to Executive Order No. 56, series of 1986. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603.188

**2. Special Court Proceedings**

Cases involving violations of Rep. Act No. 8369 shall be heard in the chambers of the Family Court Judge. 189

**3. When parents are separated**

The question as to the care, custody and control of a child or children of parents who are divorced or separated, may be brought before a Regional Trial Court by petition or as an incident to any other proceeding.

### 3.1 Award of custody

After hearing, the court shall award the care, custody and control of each child as will be for its best interest.

### 3.2 Choice of the child

The child who is over ten (10) years of age, may choose which parent he/she prefers to live with, unless the parent so chosen is unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity, or poverty.

### 3.3 Other designations

If both parents are unfit, the court may designate other persons or an institution to take charge of the child, such as the paternal or maternal grandparent of the child, or his oldest brother or sister, or some reputable and discreet person.

### 3.4 Support

The court may order either or both parents to support or help support the child, irrespective of who may be its custodian. The fact that the father has recognized the child may be a ground for ordering him to give support, but not for giving him custody of the child. 190

### 3.5 Visitation or temporary custody

The court may permit the parent who is deprived of care and custody to visit the child or have temporary custody thereof in an order that is just and reasonable.

### 3.6 Appeal

Either parent may appeal from an order made in accordance with the provisions of Section 6, Rule 99.

### 3.7 Rule of thumb

Once more, no child under seven years of age shall be separated from its mother, unless the court finds that there are compelling reasons therefor.

## 4. Special Provisional Remedies

In cases of violence among immediate family members living in the same domicile or household, the law now has special provisional remedies.

### 1. Restraining Order

Family Court may issue a restraining order against the accused or defendant upon a verified application by the complainant or the victim for relief from abuse.

### 2. Temporary Custody

The court may also order the temporary custody of children in all civil actions for their custody.

### 3. Support Pendente Lite

The court may also order support pendente lite, including deduction from the salary and use of conjugal home and other properties in all

## 5. Foster Care

Provisions on foster care are to be found in Articles 67 to 70, Presidential Decree No. 603. Foster care is to be preferred to institutional care. No child below nine (9) years of age shall be placed in an institution.<sup>192</sup>

## 6. Dependent, Abandoned Or Neglected Children

These types of children are defined in Presidential Decree No. 603, Art. 141. A verified petition for their involuntary commitment may be filed. <sup>193</sup>

### 1. Involuntary commitment

For various provisions on the procedure for involuntary commitment, such as the contents of the petition, verification, order to set time for hearing, summons, when not necessary, representation of child, duty of fiscal, hearing, commitment of child, when child may stay in his own home, termination of rights of parents, authority of person, agency or institution, change of custody, refer to Articles 142-153, Presidential Decree 603.

### 2. Voluntary commitment

Provisions on voluntary commitment which should be in writing, legal custody, visitation, report, temporary custody of children, prohibited acts, report of person or institution, refer to Articles 154 to 159, Presidential Decree 603.

### 3. Various other provisions

Other significant provisions in Presidential Decree No. 603 refer to:

Art. 159. Temporary Custody of Child

Art. 160. Prohibited Acts of Leaving an Institution

Art. 161. Duty to Report Abandonment

Art. 162. Adoption of Dependent or Abandoned or Neglected Child

Art. 163. Restoration of Child After Involuntary Commitment

Art. 164. Restoration After Voluntary Commitment

Art. 165. Removal of Custody

Art. 166. Report of Maltreated or Abused Child

Art. 167. Freedom from Liability of Reporting Person or Institution.

### 4. Special Children

A child who appears to be mentally retarded, physically handicapped, emotionally disturbed, or mentally ill, and needs institutional care but his parents or guardians are opposed thereto, a petition for commitment of the child may be filed. <sup>194</sup> Provisions on venue, contents of petition, order of hearing, disposition of property or money of the committed child, children with cerebral palsy, discharge of a child judicially committed, discharge of child voluntarily committed, report on conduct of child, and related provisions, refer to Articles 178 to 204, P.D. 603.

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<sup>192</sup> Civil Code, Article 363, second paragraph.

186 *Espiritu v. Court of Appeals*, G.R. No. 115640, March 15, 1995, 242 SCRA 362. For cases on custody, *Orda v. Court of Appeals*, G.R. No. 92625, December 26, 1990; 192 SCRA 768; *Luna v. Intermediate Appellate Court*, No. L-68374, June 18, 1985, 137 SCRA 7.

187 Rep. Act No. 7192, Sec. 27.

188 *Ibid*, Sec. 28.

189 *Ibid*, Sec. 30.

190 *David v. Court of Appeals*, G.R. No.111180, November 16, 1995, 250 SCRA 82

192 Pres. Decree No. 603, Article 68.

civil actions for support.

193 . Pres. Decree No. 603, Article 142.

194 Pres. Decree No. 603, Article 177.

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