

## What Factors Determine Child Custody in Taiwan? Using Decision Tree Learning on Court Decisions

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### Abstract

The doctrine of “best interests of the child” has been guiding courts in determining custody cases after divorce in Taiwan since 1996. In addition, Article 1055-1 of Taiwan Civil Code requires that the judge consider factors such as the age, sex, and wishes of the child; the age, occupation, character, health condition, economical condition, and the life style of the parents etc. These factors are numerous and have no order of priority, a vague standard that gives judges wide discretion to exercise their own viewpoints on what is best for the child. Therefore, although in Taiwan empirical legal studies are not widely adopted by researchers including family law scholars, the issue of child custody is an exception, in which a small amount of research has been done to explore the law in action. Previous research adapted descriptive statistics and used a Pearson’s chi-square test to analyze court cases to determine which factors that judges tend to consider. Nevertheless, a very simple yet significant question has not been answered: among these factors, which one or ones takes the top priority in Taiwanese judges’ minds? Relying on the development of computer algorithms, this question becomes possible to answer.

This essay collects 448 cases from 2012 through 2014, involving 690 children whose parents were both Taiwanese and willing to acquire the custody, and in which the Taiwanese district court granted one parent sole custody. Using decision tree learning, one of the predictive modelling approaches used in statistics,

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data mining and machine learning, this article concludes that “primary caregiver”, “child’s wish,” and “parent-child interaction” are the three most significant factors considered by judges in Taiwan. The model’s accuracy is 94.41% in its training set and 95.17% in its test set, meaning the model is quite optimal. In the custody disputes addressed by judicial decision, the mother seems to have overwhelming supremacy: in our dataset, mothers had more than an 80% likelihood of receiving sole custody. Also, the majority of the cases in Taiwan are those in which the mother is the current caregiver and the child prefers the mother. Meanwhile, the most significant factor a judge considers is “primary caregiver”, suggesting that the reason that mothers are given custody more easily than fathers is simply because in most cases they are already the primary caregivers. This reality does not fundamentally challenge the patriarchal norms that place motherhood in subordination to fatherhood. Finally, although “occupation and economic resources of the parents” was once considered an important factor in child custody in 2000 and still widely accepted by the public, our analysis does not identify it as significantly affecting judges’ decisions nowadays.

This observation allows legal scholars and judges to identify a case as typical or exceptional. Divorce lawyers can also preliminarily assess their clients’ chances at winning divorce lawsuits and propose the most optimal dispute resolution strategy. Overall, the outcome of custody litigation may be less uncertain.

**Keywords:** child custody, best interests of the child, sole custody, empirical legal study, legal informatics, data mining, decision tree learning