

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1114
Judiciary

(Delegate Charles, *et al.*)

Child Custody and Visitation - Best Interest of the Child - Factors

This bill establishes factors that a court must consider in deciding the appropriate allocation of custody or visitation between the parties that is in the best interest of the child. The bill also authorizes the court to consider additional factors.

Fiscal Summary

State Effect: The bill does not materially affect the operations or finances of the Judiciary.

Local Effect: The bill does not materially affect the operations or finances of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: Subject to specified statutory provisions regarding evidence of abuse and neglect and individuals with specified convictions, in deciding the appropriate allocation of custody or visitation between the parties that is in the best interest of the child, the court must consider:

- the ability of each of the parties to meet the child's developmental needs, including ensuring physical safety; supporting emotional security and positive self-image; promoting interpersonal skills; and promoting intellectual and cognitive growth;
- the relationship between the child and the parties, the child's siblings, and other relatives;

- the ability of each party to meet the day-to-day needs of the child, including education, socialization, food, shelter, and clothing, among other items;
- the ability of each party to (1) consider and act on the needs of the child, as opposed to the needs or desires of the party; (2) protect the child from the adverse effects of any conflict between the parties; and (3) maintain, foster, and facilitate relationships with the other party, siblings, other relatives, and other individuals who have a significant relationship with the child;
- the history of any efforts by a party to interfere with the child’s relationship with the other party;
- any evidence of exposure of the child to domestic violence, child abuse, or child neglect; and
- any military deployment of the party.

The court *may* also consider, subject to specified statutory provisions (1) the willingness and ability of the parties to participate in the raising of the child; (2) the proximity of the parties’ homes as it relates to their ability to coordinate parenting time, school, and activities; (3) the extent to which either party has initiated or engaged in frivolous or vexation litigation, as defined in the Maryland Rules; (4) the child’s preference, in specified circumstances; and (5) any other factor that the court considers appropriate in determining how to best serve the physical, developmental, and emotional needs of the child.

The court must articulate its findings of fact on the record, as specified.

Current Law:

Child Custody Determinations

Maryland courts resolve child custody disputes based on a determination of “what is in the child’s best interests.” In a custody dispute between the child’s parents, the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments. The criteria for judicial determination include, but are not limited to, (1) the fitness of the parents; (2) the character and reputation of the parents; (3) the desire of the natural parents and any agreements between them; (4) the potential for maintaining natural family relations; (5) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment; (6) material opportunities affecting the future life of the child; (7) the age, health, and sex of the child; (8) the residences of the parents and the opportunity for visitation; (9) the length of the separation of the parents; and (10) whether there was a prior voluntary abandonment or surrender of custody of the child. *Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

Traditionally, when one parent was granted “custody” of a minor child, the other parent would generally be awarded visitation rights. In 1984, the Court of Appeals first recognized and applied the concept of “joint custody.” See *Taylor v. Taylor*, 306 Md. 290 (1986). The *Taylor* Court explained that, within the meaning of “custody” are the concepts of “legal” and “physical” custody. Legal custody means the right and obligation to make long-range decisions involving the education, religious training, discipline, medical care, and other matters of major significance concerning the child’s life and welfare. With joint legal custody, both parents have an equal voice in making those decisions and neither parent’s rights are superior to the other. Physical custody means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody. Joint physical custody is in reality, “shared” or “divided” custody with the child in the physical custody of each parent for periods of time that may or may not be on a 50/50 basis. *Taylor* at 296-297.

In addition to the factors set forth in the *Sanders* decision, a court considering an award of joint custody must also examine a range of factors particularly relevant to a determination of joint custody, including (1) the capacity of the parents to communicate and reach shared decisions affecting the child’s welfare; (2) the willingness of the parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) the potential disruption of the child’s social and school life; (7) the geographic proximity of parental homes; (8) the demands of parental employment; (9) the age and number of children; (10) the sincerity of the parents’ request; (11) the financial status of the parents; (12) any impact on State or federal assistance; (13) the benefit to the parents; and (14) any other factors the court considers appropriate. *Taylor* at 304-311. The *Taylor* Court emphasized that the single most important factor in the determination of whether an award of joint legal custody is appropriate is the capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare. *Taylor* at 305.

Custody – Evidence of Abuse or Neglect

In a custody or visitation proceeding, the court must consider evidence of abuse by a party against the other parent of the party’s child, the party’s spouse, or any child residing within the party’s household, including a child other than the child who is the subject of the custody or visitation proceeding. If the court finds that the party has committed abuse against any of these individuals, it must make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of the abuse.

Custody – Parents with Specified Convictions

Unless good cause for the award of custody or visitation with a child is shown by clear and convincing evidence, a court may not award custody or visitation to:

- a parent who has been found guilty of first- or second-degree murder of the other parent of the child, another child of the parent, or any family member residing in the household of either parent of the child; or
- a parent who has been found guilty of a crime in another jurisdiction that, if committed in Maryland, would constitute the above-mentioned acts.

If it is in the best interest of the child, however, a court may approve a supervised visitation arrangement that assures the safety and the psychological, physiological, and emotional well-being of the child.

Background: The Commission on Child Custody Decision-Making, which was established by Chapter 633 of 2013, was required to study numerous aspects of custody within the State. The commission issued its final report in 2014. A primary recommendation of the commission was the need for a custody decision making statute to provide a clear, consistent, and predictable process to guide custody determinations for litigants, as well as attorneys and judges. The commission recommended that the proposed statute include determinations relating to significant regular contact with each parent, parenting quality, a child’s developmental needs, the quality of the relationship between the parents or parental figures, the parents’ psychological adjustment, and a child’s need to maintain significant relationships. The commission also recommended that the proposed statute contain no presumption regarding schedules or legal decision making. In addition, the commission adopted recommendations to establish procedural and legal safeguards to protect against bias related to gender, disability, and economic status.

Additional Information

Prior Introductions: HB 1032 of 2018, a similar bill, received a hearing in the House Judiciary Committee but was subsequently withdrawn. Its cross file, SB 684, received an unfavorable report from the Senate Judicial Proceedings Committee. SB 368 of 2017, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 508 of 2017, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Similar bills were also introduced in 2016 and 2015.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Human Services; Department of Legislative Services

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