

HOUSE BILL 748

D4

1lr1149
CF SB 57

By: **Delegate Atterbeary**

Introduced and read first time: January 29, 2021

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 5, 2021

CHAPTER _____

1 AN ACT concerning

2 **Family Law – Child Custody and Visitation**

3 FOR the purpose of requiring a court, in a custody or visitation proceeding, to deny custody
4 or visitation rights to a certain party under certain circumstances, unless the court
5 makes a certain finding and states the reasons for the finding; authorizing the court
6 to approve a supervised visitation arrangement under certain circumstances;
7 providing that any reasonable effort to protect a child or a party to a custody or
8 visitation order from the other party may not be deemed an unjustifiable denial or
9 interference with visitation under a certain provision of law; ~~establishing that there~~
10 ~~is no presumption that joint custody is in the best interest of the child in a child~~
11 ~~custody or visitation proceeding; requiring the court, in determining the best interest~~
12 ~~of the child in a custody or visitation proceeding, to give extra weight to certain~~
13 ~~factors; requiring the court to consider certain factors; authorizing the court to~~
14 ~~consider certain factors; requiring the court to articulate certain findings of fact on~~
15 ~~the record; providing for the scope of certain provisions of this Act; making certain~~
16 clarifying and conforming changes; and generally relating to child custody and
17 visitation.

18 BY repealing and reenacting, with amendments,
19 Article – Family Law
20 Section 9–101, ~~9–101.1~~, and 9–105
21 Annotated Code of Maryland
22 (2019 Replacement Volume and 2020 Supplement)

23 ~~BY adding to~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~Article – Family Law~~
 2 ~~Section 9–109~~
 3 ~~Annotated Code of Maryland~~
 4 ~~(2019 Replacement Volume and 2020 Supplement)~~

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 6 That the Laws of Maryland read as follows:

7 **Article – Family Law**

8 9–101.

9 ~~(A) THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE~~
 10 ~~CASE.~~

11 [(a) In any custody or visitation proceeding, if the court has reasonable grounds to
 12 believe that a child has been abused or neglected by a party to the proceeding, the court
 13 shall determine whether abuse or neglect is likely to occur if custody or visitation rights
 14 are granted to the party.]

15 ~~(b) (A)~~ [Unless the court specifically finds that there is no likelihood of further
 16 child abuse or neglect by the party, the] **EXCEPT AS PROVIDED IN SUBSECTION ~~(c) (B)~~**
 17 **OF THIS SECTION, IN ANY CUSTODY OR VISITATION PROCEEDING, THE** court shall
 18 deny custody or visitation rights to [that party, except that the court may approve a
 19 supervised visitation arrangement that assures the safety and the physiological,
 20 psychological, and emotional well-being of the child] **A PARTY IF THE COURT HAS**
 21 **REASONABLE GROUNDS TO BELIEVE THAT A CHILD HAS BEEN ABUSED OR**
 22 **NEGLECTED BY THE PARTY, UNLESS THE COURT:**

23 **(1) SPECIFICALLY FINDS THAT THERE IS NO LIKELIHOOD OF**
 24 **FURTHER CHILD ABUSE OR NEGLECT BY THE PARTY; AND**

25 **(2) STATES WITH SPECIFICITY THE REASONS FOR THE FINDING THAT**
 26 **THERE IS NO LIKELIHOOD OF FURTHER CHILD ABUSE OR NEGLECT BY THE PARTY.**

27 ~~(c) (B)~~ **A COURT MAY APPROVE A SUPERVISED VISITATION**
 28 **ARRANGEMENT IF THE ARRANGEMENT:**

29 **(1) SPECIFICALLY TAKES INTO ACCOUNT THE TYPE OF CHILD ABUSE**
 30 **OR NEGLECT, INCLUDING WHETHER, IN THE CASE OF CHILD ABUSE, THE ABUSE WAS**
 31 **EMOTIONAL, PHYSICAL, OR SEXUAL; AND**

32 **(2) ASSURES THE SAFETY AND THE PHYSIOLOGICAL,**
 33 **PSYCHOLOGICAL, AND EMOTIONAL WELL-BEING OF THE CHILD.**

1 ~~9-101.1.~~

2 ~~(a) In this section, "abuse" has the meaning stated in § 4-501 of this article.~~

3 ~~(b) THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE~~
4 ~~CASE.~~

5 ~~[(b)] (c) In a custody or visitation proceeding, the court shall consider, when~~
6 ~~deciding custody or visitation issues, evidence of abuse by a party against:~~

7 ~~(1) the other parent of the party's child;~~

8 ~~(2) the party's spouse; or~~

9 ~~(3) any child residing within the party's household, including a child other~~
10 ~~than the child who is the subject of the custody or visitation proceeding.~~

11 ~~[(c)] (d) If the court finds that a party has committed abuse against the other~~
12 ~~parent of the party's child, the party's spouse, or any child residing within the party's~~
13 ~~household, the court shall make arrangements for custody or visitation that best protect:~~

14 ~~(1) the child who is the subject of the proceeding; and~~

15 ~~(2) the victim of the abuse.~~

16 9-105.

17 (A) In any custody or visitation proceeding, if the court determines that a party to
18 a custody or visitation order has unjustifiably denied or interfered with visitation granted
19 by a custody or visitation order, the court may, in addition to any other remedy available
20 to the court and in a manner consistent with the best interests of the child, take any or all
21 of the following actions:

22 (1) order that the visitation be rescheduled;

23 (2) modify the custody or visitation order to require additional terms or
24 conditions designed to ensure future compliance with the order; or

25 (3) assess costs or counsel fees against the party who has unjustifiably
26 denied or interfered with visitation rights.

27 (B) ANY REASONABLE EFFORT TO PROTECT A CHILD OR A PARTY TO A
28 CUSTODY OR VISITATION ORDER FROM THE OTHER PARTY MAY NOT BE CONSIDERED
29 AN UNJUSTIFIABLE DENIAL OR INTERFERENCE WITH VISITATION GRANTED BY A
30 CUSTODY OR VISITATION ORDER.

1 ~~9-109.~~

2 (A) ~~THIS SECTION IS SUBJECT TO THE PROVISIONS OF §§ 9-101, 9-101.1,~~
3 ~~AND 9-101.2 OF THIS SUBTITLE.~~

4 (B) ~~THERE IS NO PRESUMPTION THAT JOINT CUSTODY IS IN THE BEST~~
5 ~~INTEREST OF THE CHILD.~~

6 (C) ~~IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~
7 ~~BEST INTEREST OF THE CHILD, THE COURT SHALL GIVE EXTRA WEIGHT TO FACTORS~~
8 ~~LISTED IN SUBSECTIONS (E) AND (F) OF THIS SECTION THAT AFFECT THE PHYSICAL~~
9 ~~AND PSYCHOLOGICAL SAFETY OF THE CHILD.~~

10 (D) ~~IF A CASE INVOLVES DOMESTIC VIOLENCE OR CHILD ABUSE, THE COURT~~
11 ~~SHALL EXCLUDE ANY FACTORS LISTED IN SUBSECTIONS (E) AND (F) OF THIS~~
12 ~~SECTION THAT RELATE TO THE WILLINGNESS OF A PARTY TO FACILITATE CONTACT~~
13 ~~WITH THE CHILD OR THE OTHER PARTY.~~

14 (E) ~~IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~
15 ~~BEST INTEREST OF THE CHILD, THE COURT SHALL CONSIDER THE FOLLOWING~~
16 ~~FACTORS:~~

17 (1) ~~THE ABILITY OF EACH OF THE PARTIES TO MEET THE CHILD'S~~
18 ~~DEVELOPMENTAL NEEDS, INCLUDING:~~

19 (I) ~~ENSURING PHYSICAL SAFETY;~~

20 (II) ~~SUPPORTING EMOTIONAL SECURITY AND POSITIVE~~
21 ~~SELF-IMAGE;~~

22 (III) ~~PROMOTING INTERPERSONAL SKILLS; AND~~

23 (IV) ~~PROMOTING INTELLECTUAL AND COGNITIVE GROWTH;~~

24 (2) ~~THE RELATIONSHIP BETWEEN THE CHILD AND THE PARTIES, THE~~
25 ~~CHILD'S SIBLINGS, OTHER RELATIVES, AND ANY OTHER PERSON WHO HAS A~~
26 ~~SIGNIFICANT RELATIONSHIP WITH THE CHILD;~~

27 (3) ~~THE ABILITY OF EACH PARTY TO MEET THE DAY-TO-DAY NEEDS~~
28 ~~OF THE CHILD, INCLUDING:~~

29 (I) ~~EDUCATION;~~

30 (II) ~~SOCIALIZATION;~~

1 ~~(III) CULTURE AND RELIGION;~~

2 ~~(IV) FOOD;~~

3 ~~(V) SHELTER;~~

4 ~~(VI) CLOTHING; AND~~

5 ~~(VII) MENTAL AND PHYSICAL HEALTH;~~

6 ~~(4) THE ABILITY OF EACH PARTY TO:~~

7 ~~(I) CONSIDER AND ACT ON THE NEEDS OF THE CHILD, AS~~
8 ~~OPPOSED TO THE NEEDS OR DESIRES OF THE PARTY;~~

9 ~~(II) PROTECT THE CHILD FROM THE ADVERSE EFFECTS OF ANY~~
10 ~~CONFLICT BETWEEN THE PARTIES; AND~~

11 ~~(III) MAINTAIN, FOSTER, AND FACILITATE RELATIONSHIPS WITH~~
12 ~~THE OTHER PARTY, SIBLINGS, OTHER RELATIVES, AND OTHER INDIVIDUALS WHO~~
13 ~~HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;~~

14 ~~(5) THE HISTORY OF ANY EFFORTS BY A PARTY TO INTERFERE WITH~~
15 ~~THE CHILD'S RELATIONSHIP WITH THE OTHER PARTY;~~

16 ~~(6) ANY EVIDENCE OF EXPOSURE OF THE CHILD TO DOMESTIC~~
17 ~~VIOLENCE, CHILD ABUSE, OR CHILD NEGLECT;~~

18 ~~(7) THE AGE AND GENDER OF THE CHILD; AND~~

19 ~~(8) MILITARY DEPLOYMENT OF A PARTY.~~

20 ~~(F) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~
21 ~~BEST INTEREST OF THE CHILD, THE COURT MAY CONSIDER THE FOLLOWING~~
22 ~~FACTORS:~~

23 ~~(1) EVIDENCE OF ANY PRIOR COURT ORDERS OR AGREEMENTS~~
24 ~~BETWEEN THE PARTIES, INCLUDING PRIOR AGREEMENTS CONCERNING THE~~
25 ~~CHILD'S CUSTODIAL ARRANGEMENTS OR PARENTING RESPONSIBILITIES FOR THE~~
26 ~~CHILD;~~

27 ~~(2) THE PARENTAL RESPONSIBILITIES AND THE PARTICULAR~~
28 ~~PARENTING TASKS CUSTOMARILY PERFORMED BY EACH PARTY, INCLUDING:~~

~~(I) TASKS AND RESPONSIBILITIES PERFORMED:~~

~~1. BEFORE THE INITIATION OF LITIGATION;~~

~~2. DURING THE PENDING LITIGATION; AND~~

~~3. AFTER THE ISSUANCE OF ORDERS OF COURT; AND~~

~~(H) THE EXTENT TO WHICH THE TASKS AND RESPONSIBILITIES
HAVE BEEN OR WILL BE UNDERTAKEN BY THIRD PARTIES;~~

~~(3) THE PROXIMITY OF THE PARTIES' HOMES AS IT RELATES TO THEIR
ABILITY TO COORDINATE CUSTODY AND VISITATION, SCHOOL, AND ACTIVITIES;~~

~~(4) THE RELATIONSHIP BETWEEN THE PARTIES, INCLUDING THE
ABILITY OF EACH PARTY TO:~~

~~(I) EFFECTIVELY COMMUNICATE WITH THE OTHER PARTY; AND~~

~~(H) CO-PARENT THE CHILD WITHOUT DISRUPTION TO THE
CHILD'S SOCIAL AND SCHOOL LIFE;~~

~~(5) THE EXTENT TO WHICH EITHER PARTY HAS INITIATED OR
ENGAGED IN FRIVOLOUS OR VEXATIOUS LITIGATION, AS DEFINED IN THE
MARYLAND RULES;~~

~~(6) THE CHILD'S PREFERENCE IF:~~

~~(I) THE CHILD IS OF SUFFICIENT AGE AND CAPACITY TO FORM
A PREFERENCE; AND~~

~~(H) THE COURT CONSIDERS THE CHILD'S POSSIBLE
SUSCEPTIBILITY TO MANIPULATION BY A PARTY OR BY OTHERS; AND~~

~~(7) ANY OTHER FACTOR THAT THE COURT CONSIDERS APPROPRIATE
IN DETERMINING HOW TO BEST SERVE THE PHYSICAL, DEVELOPMENTAL, AND
EMOTIONAL NEEDS OF THE CHILD.~~

~~(C) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE
RECORD, INCLUDING:~~

~~(1) THE CONSIDERATION OF EACH FACTOR LISTED IN SUBSECTION
(E) OF THIS SECTION;~~

1 ~~(2) THE CONSIDERATION OF ANY FACTOR LISTED IN SUBSECTION (F)~~
2 ~~OF THIS SECTION;~~

3 ~~(3) THE CONSIDERATION OF ANY OTHER FACTOR THAT THE COURT~~
4 ~~CONSIDERED; AND~~

5 ~~(4) THE WEIGHT THE COURT GAVE TO EACH FACTOR THAT THE COURT~~
6 ~~CONSIDERED.~~

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2021.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.