

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 564
Judiciary

(Delegate Cox, *et al.*)

Family Law – Child Custody and Visitation – Disease or Illness

This bill prohibits a disease or an illness of a party (including COVID-19 or as otherwise specified) that has not required hospitalization from being considered by the court as a factor for denying the party custody or visitation in any custody or visitation proceeding.

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

Current Law:

Child Custody Determinations

Maryland courts resolve child custody disputes based on a determination of “what is in the child’s best interests.” However, the factors to be considered by a court in making such a determination are not specified in statute but have instead been developed through case law. 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 any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court must determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party. Unless the court specifically finds that there is no likelihood of further child abuse

or neglect by the party, the court must deny custody or visitation rights to that party. However, the court is authorized to approve a supervised visitation arrangement that assures the safety and physiological, psychological, and emotional well-being of the child.

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 (or similar acts in another jurisdiction) of specified individuals. 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.

Disability

“Disability” is defined as (1) a physical or mental impairment that substantially limits one or more of an individual's major life activities; (2) a record of having a physical or mental impairment that substantially limits one or more of an individual's major life activities; or (3) being regarded as having a physical or mental impairment that substantially limits one or more of an individual's major life activities. In addition, “disability” must be construed in accordance with the Americans with Disabilities Amendments Act of 2008. In any custody or visitation proceeding, a disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child. The party alleging that the disability of the other party affects the best interest of the child bears the burden of proof. If the burden of proof is met, the party who has a disability must have an opportunity to prove that “supportive parenting services” would prevent a finding that the disability affects the best interest of the child. If the court finds that a party's disability affects the child's best interest and denies or limits custody or visitation, the court must specifically state in writing the basis for the finding and its reasoning regarding supportive parenting services, as specified.

Additional Information

Prior Introductions: None.

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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