

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1307
Judiciary

(Delegate Phillips, *et al.*)

Family Law – Child Custody and Visitation – Visitation Reevaluations and Remedies

This bill authorizes a parent to petition the court for an emergency hearing to reevaluate a child custody visitation schedule if the other parent fails to comply with a court-ordered visitation schedule without just cause. The bill also establishes related procedures and remedies.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances but may have an operational effect on the Judiciary, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government finances but may have an operational effect on the circuit courts, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: If the court determines that a petition is in order, the court must hold an emergency hearing within 10 days after a petition is filed. During the emergency hearing, the court must (1) calculate the amount of visitation time improperly denied to the petitioner; (2) award the petitioner extra time in an amount sufficient to compensate any missed visitation time under the visitation agreement; (3) schedule any extra time awarded in a manner that is consistent with the best interests of the child, convenient for the petitioner, and at the expense of the noncompliant parent; and (4) order the noncompliant parent to pay court costs and reasonable attorney's fees incurred by the petitioner in the

effort to enforce the visitation schedule. The court may order the noncompliant parent to attend a court-approved parenting course, perform community service (if doing so does not interfere with the best interests of the child), and assume the financial responsibility of ensuring the court-ordered visitation schedule is maintained, as specified. The court may (1) at the request of the petitioner, modify the visitation schedule if it is in the best interests of the child and (2) impose any other reasonable sanction. A parent in violation of the court's order may be held in contempt of court.

Current Law: 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 (now the Supreme Court of Maryland) 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.

Section 1-201 of the Family Law Article grants the circuit court continuing equitable jurisdiction in custody matters by generally establishing that in exercising its jurisdiction over custody, guardianship, visitation, or child support cases, the circuit court may set aside or modify its decree or order concerning the child.

State/Local Fiscal Effect: The bill's provisions may result in operational impacts for the Judiciary and the circuit courts, as some courts may have difficulty accommodating the expedited hearings required under the bill without affecting the court's ability to handle other matters scheduled in advance and/or other matters that require prompt attention. The extent of the operational impact may vary throughout the circuit courts and depends on the volume of petitions ultimately received under the bill. Any fiscal impact *solely* attributable to the bill's provisions is not anticipated to be material.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

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