

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 848
Judiciary

(Delegate McComas, *et al.*)

Judicial Proceedings

Family Law - Child Custody - Determinations

This bill establishes numerous factors in statute that courts may consider in determining what legal custody and physical custody is in the best interest of a child. The court must articulate its findings of fact on the record or in a written opinion, including the consideration of each factor specified in the bill and any other factor that the court considered. The bill also authorizes a court to modify a child custody or visitation order if the court determines that there has been a material change in circumstances since the issuance of the order, as specified.

Fiscal Summary

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

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes a new subtitle that specifies numerous factors for judicial consideration in cases involving custody of a child. Subject to specified statutory provisions regarding evidence of abuse and neglect and individuals with specified convictions, in determining what legal and physical custody is in the best interest of the child, the court may consider specified factors, including:

- stability and the foreseeable health and welfare of the child;

- whether and how parents who do not live together will share the rights and responsibilities of raising the child;
- the child’s physical and emotional security and protection from exposure to conflict and violence;
- the child’s developmental needs, including physical safety, emotional security, positive self-image, interpersonal skills, and intellectual and cognitive growth;
- the day-to-day needs of the child, including education, socialization, culture and religion, food, shelter, clothing, and mental and physical health;
- the parents’ relationship with each other, as specified;
- the child’s preference, if age-appropriate; and
- any other factor that the court considers appropriate in determining how best to serve the physical, developmental, and emotional needs of the child.

The court may modify a child custody or visitation order if the court determines that (1) there has been a material change in circumstances since the issuance of the order that relates to the needs of the child or the ability of the parents to meet those needs and (2) modifying the order is in the best interest of the child. A parent’s proposal to relocate the residence of the parent or child in a way that would cause physical custody to be impracticable constitutes a material change in circumstances.

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 (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.

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.

Additional Information

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

Designated Cross File: SB 327 (Senator West) - Judicial Proceedings., HB 79 (Delegate Williams) - Judiciary.

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

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