



Montgomery County

Office of Intergovernmental Relations

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SB 57

DATE: January 26, 2021

SPONSOR: Senator Lee

ASSIGNED TO: Judicial Proceedings

CONTACT PERSON: Leslie Frey

(leslie.frey@montgomerycountymd.gov)

POSITION: SUPPORT WITH AMENDMENTS

(Department of Health and Human Services)

Family Law – Child Custody and Visitation

Senate Bill 57 establishes specified factors for courts to consider in determining the best interest of the child in a custody or visitation proceeding, among other provisions.

Currently, Family Law - Article §9-101 is the governing standard in Child in Need of Assistance Cases (CINA) cases where the local Child Welfare Services entity has proven abuse or neglect by a parent and the court is considering granting visitation to the parent. Under Family Law - Article §9-101(b), visitation must be supervised, and the court may not grant unsupervised visitation unless it finds there is “no likelihood of further abuse or neglect”.

The bill provides that §9-101 would no longer apply to CINA matters, but it does not provide for a replacement standard that would apply to CINA cases. Courts would continue to have the authority to make visitation orders consistent with the best interest of children but would no longer be bound by the §9-101 standard. Montgomery County DHHS respectfully requests that the bill be amended to remove the language exempting CINA cases from §9-101 because it removes a legal protection currently in place that ensures maltreaters are only granted unsupervised access once the higher “no likelihood of further abuse or neglect” standard is met.

Additionally, Montgomery County DHHS requests that the bill be amended to specifically state that §9-109 does not apply to CINA cases; in this instance, it is our understanding that the language in §9-109 is not intended to apply to CINA cases and for clarity we ask that the bill language reflect this intent.

A draft of our suggested amendments is included with this testimony. Montgomery County DHHS respectfully urges the committee to issue a favorable report with our amendments.

Article – Family Law

4 9–101.

5 ~~(A) THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE~~

6 ~~CASE.~~

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

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

.....

9–109.

29 (A) [THIS SECTION IS SUBJECT TO THE PROVISIONS OF §§ 9–101, 9–101.1,

30 AND 9–101.2 OF THIS SUBTITLE.] **THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE**
CASE.

1 (B) ~~THERE IS NO PRESUMPTION THAT JOINT CUSTODY IS IN THE BEST~~

2 ~~INTEREST OF THE CHILD.~~

3 (C) ~~IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~

4 ~~BEST INTEREST OF THE CHILD, THE COURT SHALL GIVE EXTRA WEIGHT TO FACTORS~~

5 ~~LISTED IN SUBSECTIONS (E) AND (F) OF THIS SECTION THAT AFFECT THE PHYSICAL~~

6 ~~AND PSYCHOLOGICAL SAFETY OF THE CHILD.~~

7 (D) ~~IF A CASE INVOLVES DOMESTIC VIOLENCE OR CHILD ABUSE, THE COURT~~

~~8 SHALL EXCLUDE ANY FACTORS LISTED IN SUBSECTIONS (E) AND (F) OF THIS
9 SECTION THAT RELATE TO THE WILLINGNESS OF A PARTY TO FACILITATE CONTACT
10 WITH THE CHILD OR THE OTHER PARTY.~~

~~11 (E) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE
12 BEST INTEREST OF THE CHILD, THE COURT SHALL CONSIDER THE FOLLOWING
13 FACTORS:~~

~~14 (1) THE ABILITY OF EACH OF THE PARTIES TO MEET THE CHILD'S
15 DEVELOPMENTAL NEEDS, INCLUDING:~~

~~16 (I) ENSURING PHYSICAL SAFETY;~~

~~17 (II) SUPPORTING EMOTIONAL SECURITY AND POSITIVE
18 SELF-IMAGE;~~

~~19 (III) PROMOTING INTERPERSONAL SKILLS; AND~~

~~20 (IV) PROMOTING INTELLECTUAL AND COGNITIVE GROWTH;~~

~~21 (2) THE RELATIONSHIP BETWEEN THE CHILD AND THE PARTIES, THE
22 CHILD'S SIBLINGS, OTHER RELATIVES, AND ANY OTHER PERSON WHO HAS A
23 SIGNIFICANT RELATIONSHIP WITH THE CHILD;~~

~~24 (3) THE ABILITY OF EACH PARTY TO MEET THE DAY-TO-DAY NEEDS
25 OF THE CHILD, INCLUDING:~~

~~26 (I) EDUCATION;~~

~~27 (II) SOCIALIZATION;~~

~~28 (III) CULTURE AND RELIGION;~~

~~29 (IV) FOOD;~~

~~1 (V) SHELTER;~~

~~2 (VI) CLOTHING; AND~~

~~3 (VII) MENTAL AND PHYSICAL HEALTH;~~

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

~~5 (I) CONSIDER AND ACT ON THE NEEDS OF THE CHILD, AS
6 OPPOSED TO THE NEEDS OR DESIRES OF THE PARTY;~~

~~7 (II) PROTECT THE CHILD FROM THE ADVERSE EFFECTS OF ANY~~

~~8 CONFLICT BETWEEN THE PARTIES; AND~~

~~9 (III) MAINTAIN, FOSTER, AND FACILITATE RELATIONSHIPS WITH~~

~~10 THE OTHER PARTY, SIBLINGS, OTHER RELATIVES, AND OTHER INDIVIDUALS WHO~~

~~11 HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;~~

~~12 (5) THE HISTORY OF ANY EFFORTS BY A PARTY TO INTERFERE WITH~~

~~13 THE CHILD'S RELATIONSHIP WITH THE OTHER PARTY;~~

~~14 (6) ANY EVIDENCE OF EXPOSURE OF THE CHILD TO DOMESTIC~~

~~15 VIOLENCE, CHILD ABUSE, OR CHILD NEGLECT;~~

~~16 (7) THE AGE AND GENDER OF THE CHILD; AND~~

~~17 (8) MILITARY DEPLOYMENT OF A PARTY.~~

~~18 (F) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~

~~19 BEST INTEREST OF THE CHILD, THE COURT MAY CONSIDER THE FOLLOWING~~

~~20 FACTORS:~~

~~21 (1) EVIDENCE OF ANY PRIOR COURT ORDERS OR AGREEMENTS~~

~~22 BETWEEN THE PARTIES, INCLUDING PRIOR AGREEMENTS CONCERNING THE~~

~~23 CHILD'S CUSTODIAL ARRANGEMENTS OR PARENTING RESPONSIBILITIES FOR THE~~

~~24 CHILD;~~

~~25 (2) THE PARENTAL RESPONSIBILITIES AND THE PARTICULAR~~

~~26 PARENTING TASKS CUSTOMARILY PERFORMED BY EACH PARTY, INCLUDING:~~

~~27 (I) TASKS AND RESPONSIBILITIES PERFORMED:~~

~~6 SENATE BILL 57~~

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

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

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

~~4 (II) THE EXTENT TO WHICH THE TASKS AND RESPONSIBILITIES~~

~~5 HAVE BEEN OR WILL BE UNDERTAKEN BY THIRD PARTIES;~~

~~6 (3) THE PROXIMITY OF THE PARTIES' HOMES AS IT RELATES TO THEIR~~

~~7 ABILITY TO COORDINATE CUSTODY AND VISITATION, SCHOOL, AND ACTIVITIES;~~

~~8 (4) THE RELATIONSHIP BETWEEN THE PARTIES, INCLUDING THE~~

9 ABILITY OF EACH PARTY TO:

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

11 (II) CO-PARENT THE CHILD WITHOUT DISRUPTION TO THE

12 CHILD'S SOCIAL AND SCHOOL LIFE;

13 (5) THE EXTENT TO WHICH EITHER PARTY HAS INITIATED OR

14 ENGAGED IN FRIVOLOUS OR VEXATIOUS LITIGATION, AS DEFINED IN THE

15 MARYLAND RULES;

16 (6) THE CHILD'S PREFERENCE IF:

17 (I) THE CHILD IS OF SUFFICIENT AGE AND CAPACITY TO FORM

18 A PREFERENCE; AND

19 (II) THE COURT CONSIDERS THE CHILD'S POSSIBLE

20 SUSCEPTIBILITY TO MANIPULATION BY A PARTY OR BY OTHERS; AND

21 (7) ANY OTHER FACTOR THAT THE COURT CONSIDERS APPROPRIATE

22 IN DETERMINING HOW TO BEST SERVE THE PHYSICAL, DEVELOPMENTAL, AND

23 EMOTIONAL NEEDS OF THE CHILD.

24 (G) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE

25 RECORD, INCLUDING:

26 (1) THE CONSIDERATION OF EACH FACTOR LISTED IN SUBSECTION

27 (E) OF THIS SECTION;

28 (2) THE CONSIDERATION OF ANY FACTOR LISTED IN SUBSECTION (F)

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1 OF THIS SECTION;

2 (3) THE CONSIDERATION OF ANY OTHER FACTOR THAT THE COURT

3 CONSIDERED; AND

4 (4) THE WEIGHT THE COURT GAVE TO EACH FACTOR THAT THE COURT

5 CONSIDERED.

**(B) THIS SECTION IS SUBJECT TO THE PROVISIONS OF §§ 9-101, 9-101.1,
30 AND 9-101.2 OF THIS SUBTITLE.**

1 (C) THERE IS NO PRESUMPTION THAT JOINT CUSTODY IS IN THE BEST

2 INTEREST OF THE CHILD.

3 (D) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE

4 BEST INTEREST OF THE CHILD, THE COURT SHALL GIVE EXTRA WEIGHT TO FACTORS

5 LISTED IN SUBSECTIONS (E) AND (F) OF THIS SECTION THAT AFFECT THE PHYSICAL

6 AND PSYCHOLOGICAL SAFETY OF THE CHILD.

7 (E) IF A CASE INVOLVES DOMESTIC VIOLENCE OR CHILD ABUSE, THE COURT

8 SHALL EXCLUDE ANY FACTORS LISTED IN SUBSECTIONS (E) AND (F) OF THIS

9 SECTION THAT RELATE TO THE WILLINGNESS OF A PARTY TO FACILITATE CONTACT

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15 DEVELOPMENTAL NEEDS, INCLUDING:

16 (I) ENSURING PHYSICAL SAFETY;

17 (II) SUPPORTING EMOTIONAL SECURITY AND POSITIVE

18 SELF-IMAGE;

19 (III) PROMOTING INTERPERSONAL SKILLS; AND

20 (IV) PROMOTING INTELLECTUAL AND COGNITIVE GROWTH;

21 (2) THE RELATIONSHIP BETWEEN THE CHILD AND THE PARTIES, THE

22 CHILD'S SIBLINGS, OTHER RELATIVES, AND ANY OTHER PERSON WHO HAS A

23 SIGNIFICANT RELATIONSHIP WITH THE CHILD;

24 (3) THE ABILITY OF EACH PARTY TO MEET THE DAY-TO-DAY NEEDS

25 OF THE CHILD, INCLUDING:

26 (I) EDUCATION;

27 (II) SOCIALIZATION;

28 (III) CULTURE AND RELIGION;

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3 (VII) MENTAL AND PHYSICAL HEALTH;

4 (4) THE ABILITY OF EACH PARTY TO:

5 (I) CONSIDER AND ACT ON THE NEEDS OF THE CHILD, AS

6 OPPOSED TO THE NEEDS OR DESIRES OF THE PARTY;

7 (II) PROTECT THE CHILD FROM THE ADVERSE EFFECTS OF ANY

8 CONFLICT BETWEEN THE PARTIES; AND

9 (III) MAINTAIN, FOSTER, AND FACILITATE RELATIONSHIPS WITH

10 THE OTHER PARTY, SIBLINGS, OTHER RELATIVES, AND OTHER INDIVIDUALS WHO

11 HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;

12 (5) THE HISTORY OF ANY EFFORTS BY A PARTY TO INTERFERE WITH

13 THE CHILD'S RELATIONSHIP WITH THE OTHER PARTY;

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15 VIOLENCE, CHILD ABUSE, OR CHILD NEGLECT;

16 (7) THE AGE AND GENDER OF THE CHILD; AND

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22 BETWEEN THE PARTIES, INCLUDING PRIOR AGREEMENTS CONCERNING THE

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24 CHILD;

25 (2) THE PARENTAL RESPONSIBILITIES AND THE PARTICULAR

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27 (I) TASKS AND RESPONSIBILITIES PERFORMED:

6 SENATE BILL 57

1 1. BEFORE THE INITIATION OF LITIGATION;

2 2. DURING THE PENDING LITIGATION; AND

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

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5 HAVE BEEN OR WILL BE UNDERTAKEN BY THIRD PARTIES;

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