
By: Delegate Montague

Introduced and read first time: February 23, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Shared Parenting**

3 FOR the purpose of establishing that, in a contested child custody proceeding, a court
4 may determine a certain parenting arrangement; specifying the court's authority in
5 determining a parenting arrangement for a child; establishing certain factors a court
6 may consider to determine a certain parenting arrangement; providing that shared
7 custody shall be construed in a certain manner; providing that the provisions of this
8 Act are not intended to establish a presumption in favor of sole custody, traditional
9 joint custody, or shared parenting joint custody in appropriate cases; providing that
10 a court shall allow a parent to participate at least to some degree in certain decision
11 making unless the court makes certain findings; defining certain terms; declaring
12 the legislative intent and purpose of this Act; providing for the prospective
13 application of this Act; clarifying the application of certain terms; and generally
14 relating to parenting arrangements in contested child custody proceedings.

15 BY adding to

16 Article - Family Law
17 Section 9-501 through 9-504, inclusive, to be under the new subtitle "Subtitle 5.
18 Shared Parenting"
19 Annotated Code of Maryland
20 (1991 Replacement Volume and 1995 Supplement)

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

23 **Article - Family Law**

24 SUBTITLE 5. SHARED PARENTING.

25 9-501.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (B) "ACCESS" MEANS RESIDENTIAL CONTACT, INCLUDING TELEPHONE
29 CONTACT.

1 (C) "SHARED PARENTING" MEANS A PART OR PARTS OF ANY AGREEMENT,
2 COURT ORDER, OR DECREE THAT DEFINES AND DELINEATES EACH PARENT'S
3 LEGAL RIGHTS AND RESPONSIBILITIES FOR A MINOR CHILD FOR PROVIDING
4 SHELTER, CARE, NURTURING, DECISION MAKING, AND ACCESS.

5 (D) "RESIDENTIAL CONTACT" MEANS THE RIGHT AND OBLIGATION TO
6 PROVIDE A HOME AND TO MAKE ROUTINE PARENTING DECISIONS CONCERNING
7 SHELTER, CARE, AND NURTURING FOR A MINOR CHILD.

8 9-502.

9 (A) THE GENERAL ASSEMBLY DECLARES THAT:

10 (1) THE BEST INTEREST OF CHILDREN IS SERVED IF BOTH PARENTS ARE
11 ACTIVELY INVOLVED IN THEIR LIVES, EVEN IF THE PARENTS ARE SEPARATED OR
12 DIVORCED;

13 (2) DECISIONS MADE IN AN ADVERSARIAL CUSTODY OR VISITATION
14 PROCEEDING ARE NOT ALWAYS CONSISTENT WITH THAT BEST INTEREST;

15 (3) AN AWARD OF CUSTODY OR VISITATION TO ONE PARENT OFTEN
16 INTENSIFIES CONFLICTS BETWEEN PARENTS BECAUSE OF THE PERCEPTION THAT
17 ONE PARENT HAS EITHER "WON" OR "LOST" THEIR CHILD;

18 (4) SOLE OR JOINT CUSTODY DOES NOT ALWAYS PROVIDE THE
19 LATITUDE TO FACILITATE SHARED PARENTING AND SPECIFICALLY MATCH THE
20 SKILLS AND INTERESTS OF A PARENT WITH THE CORRESPONDING NEEDS OF A
21 CHILD;

22 (5) PARENTS MAY NOT BE ABLE TO AGREE TO TRADITIONAL JOINT
23 CUSTODY IN WHICH BOTH PARENTS MUST AGREE ON DECISIONS FOR THE CHILD
24 AND YET THE CHILD NEEDS BOTH PARENTS TO RETAIN SOME DECISION MAKING
25 AUTHORITY;

26 (6) NO CARING AND CAPABLE PARENT SHOULD BE INTERPRETED AS
27 "VISITING" THE PARENT'S CHILD SINCE VISITATION IS OFTEN INTERPRETED AS
28 DIMINISHED RESPONSIBILITY AND "SECOND CLASS" STATUS AS IT RELATES TO A
29 CHILD AND OFTEN RESULTS IN ABANDONMENT, NEGLECT, AND NONSUPPORT OF A
30 CHILD BY THE PARENT WITH ONLY "VISITATION" RIGHTS.

31 (B) THE PURPOSES OF THIS SUBTITLE ARE TO:

32 (1) MAXIMIZE CONTINUED CONTACT WITH AND RESPONSIBILITY OF
33 EACH PARENT IN RAISING CHILDREN AFTER SEPARATION OR DIVORCE;

34 (2) IN APPROPRIATE CASES, ALLOW A COURT TO TAKE ADVANTAGE OF
35 EACH PARENT'S RESOURCES, SKILLS, AND INTERESTS IN ORDER TO BEST PROVIDE
36 FOR A CHILD'S NEEDS AND CUSTOMIZE A PARENTING ARRANGEMENT TO ALLOW
37 EACH PARENT TO PARTICIPATE IN RAISING A CHILD AFTER SEPARATION OR
38 DIVORCE; AND

39 (3) PROVIDE AN OPTIONAL APPLICATION OF TRADITIONAL JOINT
40 CUSTODY THROUGH WHICH, EVEN THOUGH THE PARENTS DO NOT AGREE TO JOINT

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1 DECISION MAKING, EACH PARENT CAN BE ASSIGNED CERTAIN DECISION MAKING
2 RESPONSIBILITY WHEN A COURT STRUCTURES AN ORDER IN A CONTESTED
3 CUSTODY PROCEEDING.

4 9-503.

5 (A) (1) IN CONTESTED CUSTODY PROCEEDINGS, A COURT MAY DETERMINE
6 A SHARED PARENTING ARRANGEMENT FOR EACH CHILD.

7 (2) IN DETERMINING A SHARED PARENTING ARRANGEMENT, THE
8 COURT MAY DECIDE:

9 (I) THE CHILD'S RESIDENTIAL CONTACT, INCLUDING SPECIFIC
10 DAYS OR AMOUNT OF TIME A CHILD WILL SPEND WITH EACH PARENT, THE USE AND
11 POSSESSION OF THE FAMILY HOME AND PROPERTY, AND THE TIMES AND
12 CIRCUMSTANCES OF COMMUNICATION BETWEEN EACH PARENT AND CHILD;

13 (II) EACH PARENT'S SHARED OR INDIVIDUAL PARENTAL
14 RESPONSIBILITY, INCLUDING DECISIONS REGARDING MEDICAL OR MENTAL
15 HEALTH CARE, EDUCATION, RELIGIOUS TRAINING, DISCIPLINE, SPORTS,
16 EXTRACURRICULAR ACTIVITIES, AND THE CULTURAL AND RECREATIONAL NEEDS
17 OF THE CHILD;

18 (III) THE RESPONSIBILITIES OF EACH PARENT FOR THE
19 TRANSPORTATION NEEDS OF A CHILD;

20 (IV) THE AMOUNT AND CONDITIONS OF CHILD SUPPORT FROM
21 EACH PARENT PURSUANT TO LAW; AND

22 (V) WHETHER, AND TO WHAT EXTENT, EACH PARENT'S DECISION
23 MAKING AUTHORITY WITH RESPECT TO EACH SPECIFIC ASPECT OF THE CHILD'S
24 NEEDS OVERLAPS WITH THE OTHER PARENT'S DECISION MAKING AUTHORITY.

25 (B) IN DETERMINING A SHARED PARENTING ARRANGEMENT, THE COURT
26 MAY CONSIDER THE FOLLOWING FACTORS:

27 (1) THE PRESENT AND FUTURE NEEDS OF THE CHILD;

28 (2) EACH PARENT'S PROPOSED PARENTAL PLAN;

29 (3) EACH PARENT'S HISTORY OF CARING FOR THE NEEDS OF THE
30 CHILD;

31 (4) THE ABILITY OF EACH PARENT TO DETERMINE, INVESTIGATE, AND
32 IMPLEMENT DECISIONS CONCERNING THE NEEDS OF THE CHILD;

33 (5) THE FITNESS, CHARACTER, AND REPUTATION OF A PARENT
34 INCLUDING HISTORY OF ABUSE AND DOMESTIC VIOLENCE;

35 (6) THE POTENTIALITY OF MAINTAINING POSITIVE AND COOPERATIVE
36 FAMILY RELATIONS;

37 (7) THE AGE, BACKGROUND, AND SEX OF A CHILD;

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1 (8) THE EXTENT TO WHICH A PARENT PARTICIPATED IN PARENTING
2 EDUCATION PROGRAMS;

3 (9) THE DESIRE OF THE PARENTS AND ANY PARENTAL AGREEMENT
4 BETWEEN THEM; AND

5 (10) THE PREFERENCE OF A CHILD IF THE CHILD IS OF SUFFICIENT AGE
6 AND CAPACITY TO FORM A RATIONAL JUDGMENT.

7 (C) SHARED CUSTODY SHALL BE CONSTRUED AS AN OPTIONAL APPLICATION
8 OF TRADITIONAL JOINT CUSTODY WITH REGARD TO OTHER LAWS AND CASES
9 REQUIRING THE APPLICATION OF THE WORD "CUSTODY".

10 (D) NOTHING IN THIS SECTION IS INTENDED TO ESTABLISH A PRESUMPTION
11 IN FAVOR OF SOLE CUSTODY, TRADITIONAL JOINT CUSTODY, OR SHARED
12 PARENTING JOINT CUSTODY.

13 (E) THE COURT SHALL PROVIDE THAT EACH PARENT PARTICIPATE IN SOME
14 DEGREE IN DECISION MAKING IN AT LEAST SOME AREA OF THE CHILD'S LIFE,
15 UNLESS THE COURT FINDS THAT THE BEST INTEREST OF THE CHILD IS NOT SERVED
16 BY SUCH PARTICIPATION.

17 9-504.

18 THE PROVISIONS OF THIS SUBTITLE MAY NOT BE CONSTRUED TO ALTER THE
19 PROVISIONS, CONSIDERATIONS, AND REQUIREMENTS OF THE TERMS "CUSTODY"
20 AND "VISITATION" AS DEFINED AND INTERPRETED IN THE CODE AND CASE LAW.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
22 only prospectively and may not be applied or interpreted to have any effect on or
23 application to any cause of action arising before the effective date of this Act.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1996.