

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 417
Judicial Proceedings

(Senator Giannetti)

Children - Joint Legal Custody - Preference

This bill provides that in an initial child custody proceeding, whether *pendente lite* or permanent, the court must first consider an award of joint legal custody of the child to the parents, if it is in the best interests of the child. If the court does not find such an arrangement appropriate, the court must order a disposition that is in the best interests of the child. The bill does not affect the court's authority to consider domestic violence and other provisions which may affect custody arrangements.

The bill has prospective application and applies only to cases filed on or after the bill's October 1, 2005 effective date.

Fiscal Summary

State Effect: The bill is not expected to materially affect governmental operations or finances.

Local Effect: None – see above.

Small Business Effect: None.

Analysis

Current Law: Maryland courts resolve custody disputes based on a determination of “what is in the child’s best interests.” *Taylor v. Taylor*, 306 Md. 290, 500 A.2d 964 (1986). In a custody dispute between a child’s parents, the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments.

The criteria for judicial determination includes, but is not limited to: (1) the fitness of the parents; (2) the character and reputation of the parties; (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. *See: Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

In addition to the factors specified above, in cases in which the court is considering an award of joint custody, the court examines 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. *See: Taylor v. Taylor*, 306 Md. 290, 508 A.2d 964 (1986).

The court's discretion to determine custody or visitation is limited as provided by law if there is an allegation or evidence of abuse or neglect. If the court has reasonable grounds to believe that a child has been abused or neglected by a party in a custody proceeding, the court must determine whether the 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 further likelihood of child abuse or neglect by the party, the court must deny custody or visitation rights to that party except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well being of the child.

State and Local Fiscal Effect: This bill requires judges to alter the manner in which they make custody decisions, but is not expected to materially affect the operations of the Judiciary. The bill would not alter case management standards and family services provided by the circuit courts and the Family Services Administration in the Administrative Office of the Courts.

Additional Information

Prior Introductions: This bill is similar to HB 1217 of the 2004 session, which received a favorable report from the Judiciary Committee, as amended, but was then re-referred to the Judiciary Committee, where no further action was taken. In the 2003 session, HB 1158, a bill that was a prior introduction of HB 1217, was heard in the Judiciary Committee, but was then withdrawn.

Cross File: HB 1052 (Delegate O'Donnell, *et al.*) – Judiciary.

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

Fiscal Note History: First Reader - February 17, 2005
ncs/jr

Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510