

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 687
 Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Commission on Child Custody Decision Making

This bill establishes the Commission on Child Custody Decision Making, to be staffed by the Department of Family Administration within the Judiciary. The commission must be appointed, organized, and begin its deliberations by September 1, 2013. The commission must submit an interim report of its findings and recommendations to the Governor and the General Assembly by December 31, 2013. A final report must be submitted to the Governor and the General Assembly by December 1, 2014.

The bill takes effect July 1, 2013, and terminates December 31, 2014.

Fiscal Summary

State Effect: General fund expenditures increase by \$137,100 in FY 2014 and by \$76,600 in FY 2015 to staff the commission. Any expenses related to meetings and reimbursements for commission members are assumed to be minimal and absorbable within existing resources. Revenues are not affected.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	137,100	76,600	0	0	0
Net Effect	(\$137,100)	(\$76,600)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The commission must:

- study the practice, principles, and process for child custody decisionmaking in the State;
- hold five hearings in specified jurisdictions by December 31, 2013, to allow for public input and participation by interested persons;
- study how to make the establishment and modification of child custody orders more uniform, fair, and equitable;
- study how to reduce litigation in child custody proceedings;
- study and consider the adverse effects of child custody litigation and ways the court system can minimize those effects;
- study how to promote and ensure that children have ongoing relationships with each parent;
- study how to maximize the involvement of both parents in each child's life;
- study the advantages and disadvantages of joint physical custody and the impact of joint physical custody on the health and well-being of children;
- study whether or not there is any gender discrimination in custody decisions in the State and, if so, how to address the discrimination;
- study statutes from other states used for child custody determinations and assess whether those statutes improve the quality of decisions in child custody cases;
- study whether the Annotated Code should contain a statute regarding child custody decisionmaking that would include definitions and factors for consideration in such decisions;
- study case management systems for family law cases in Maryland and other states and study how to improve timely access to the court for temporary, *pendente lite* custody disputes, initial custody determinations, custody modification

proceedings, and emergency proceedings, and how to expedite denial of visitation proceedings;

- study the accountability of Maryland courts when using interventions such as protective orders, whether the courts should adopt processes to allow for compliance hearings, and the impact of domestic violence proceedings on temporary and final custody determinations;
- make recommendations regarding the most effective manner in which to facilitate cooperative decisionmaking by parents involved in child custody proceedings as it relates to their children;
- study the judicial training programs currently available regarding child custody decisionmaking and assess how to improve the training, including how to make it more culturally sensitive and diverse, and how to make it more available to all judges on a consistent, ongoing basis;
- review the literature and research on decisionmaking responsibility and physical custody determinations, including child development literature and research on the impact of separation and divorce, and the literature and research on decisionmaking responsibility and physical custody determinations when the parents in the case were never married and may not have lived together;
- study standardization of the language used by courts in making child custody determinations for clarity and to eliminate exclusionary or discriminatory terms;
- study how to ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations;
- gather quantitative and qualitative data on the total number of contested custody cases per jurisdiction, including whether the court awarded joint physical custody to the parties or primary physical custody to the mother or the father over a two-year period; and
- gather quantitative data on whether *pro bono* legal resources are equally available for petitioners and respondents in domestic violence protective order proceedings in Maryland.

Task force members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law: Maryland courts resolve child custody disputes based on a determination of “what is in the child’s best interests.” In a custody dispute between the 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 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 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.

Background: Although the Maryland Judiciary does not keep statistics on custody outcomes, the Women's Law Center conducted a comprehensive study of divorce and custody cases filed in Maryland in fiscal 2003. See *Families in Transition: A Follow-Up Study Exploring Family Law Issues in Maryland* (2006). The research sample included 1,268 cases that involved custody issues. Of the total number of cases in the sample, more than half (55%) resulted in some form of joint legal custody (joint legal with physical custody to mother, joint legal with physical custody to father, and joint legal and physical custody). The report concluded that the cases in which joint legal and/or physical custody were imposed by judicial intervention resulted in more subsequent litigation than when the parties agreed to it. Specifically, when the court ordered joint legal and physical custody, or when it ordered joint legal custody and primary physical custody to the fathers, subsequent litigation rates were the highest at 19% and 27%, respectively.

According to the American Bar Association's 2012 *Family Law Quarterly*, eight states (Florida, Idaho, Louisiana, Nevada, New Mexico, Tennessee, Texas, and Wisconsin) have a presumption that joint custody is in the best interest of the child. An additional five states (Alabama, California, Connecticut, Minnesota, and Mississippi) have a presumption that joint custody is in the best interest of the child only if the parents agree.

A review of statutes conducted by the Department of Legislative Services in 2011 also found that two states (Maine and Michigan) require courts to award joint custody if the parents agree to it. Sixteen states (Alabama, Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Iowa, Louisiana, Minnesota, Mississippi, Nevada, Oklahoma, Oregon, and Wisconsin) and the District of Columbia have rebuttable presumptions that joint custody is not in the best interest of the child if there have been allegations of domestic violence. Finally, two states (Texas and Washington) prohibit courts from awarding joint custody if there is a history of domestic violence.

State Fiscal Effect: General fund expenditures increase by \$137,145 in fiscal 2014 and by \$76,595 in fiscal 2015 to hire two contractual employees to staff the commission and gather the required information to complete the reports. This estimate assumes that the Judiciary redirects resources from other projects so it may absorb any additional expenditures related to reimbursements for commission members, conducting the public hearings, and the preparation and distribution of materials to be used during commission meetings.

Additional Information

Prior Introductions: HB 1165 of 2012, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); American Bar Association; Women's Law Center of Maryland, Inc.; Department of Legislative Services

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