

HOUSE BILL 1032

D4
HB 508/17 – JUD

8lr2112
CF SB 684

By: **Delegates Dumais and McComas**

Introduced and read first time: February 7, 2018

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Child Custody – Legal Decision Making and Parenting Time**

3 FOR the purpose of repealing references to the terms “child custody” and “visitation” in
4 certain instances and substituting the terms “legal decision making” and “parenting
5 time” in certain instances; requiring the court, in determining the appropriate
6 allocation of legal decision making or parenting time between the parties, to consider
7 certain factors; authorizing the court to consider certain factors; requiring the court
8 to articulate certain findings of fact on the record; authorizing the court to award
9 joint legal decision making to both parties under certain circumstances; prohibiting
10 a party from unilaterally making certain decisions concerning a child without
11 agreement of the other party or order of the court under certain circumstances;
12 authorizing the court to modify a child custody or visitation order or a legal decision
13 making or parenting time order under certain circumstances; specifying that a
14 party’s proposal to relocate the residence of the party or the child in a certain manner
15 constitutes a material change in circumstances for purposes of a modification of an
16 order; specifying the purposes of this Act; repealing certain provisions relating to the
17 relevancy of a disability of a party in a child custody or visitation proceeding; making
18 certain clarifying and conforming changes; defining certain terms; and generally
19 relating to child custody, visitation, legal decision making, and parenting time.

20 BY repealing

21 Article – Family Law

22 Section 5–203(d) and 9–107

23 Annotated Code of Maryland

24 (2012 Replacement Volume and 2017 Supplement)

25 BY adding to

26 Article – Family Law

27 Section 9–101 and 9–103 to be under the amended subtitle “Subtitle 1. Definitions;
28 General Provisions” and the amended title “Title 9. Custodial Arrangements
29 for Children”; and 9–201 through 9–204 to be under the new subtitle “Subtitle

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “LEGAL DECISION MAKING” IS ALSO KNOWN AS LEGAL CUSTODY.

2 (E) (1) “PARENTING TIME” MEANS:

3 (I) THE TIME THE CHILD IS IN A PARENT’S CARE ACCORDING TO
4 AN AGREEMENT OR COURT-ORDERED SCHEDULE; AND

5 (II) THE RIGHT AND OBLIGATION OF A PARENT TO PROVIDE A
6 HOME FOR THE CHILD, ADDRESS THE CHILD’S NEEDS, AND MAKE THE DAY-TO-DAY
7 DECISIONS REQUIRED DURING THE TIME THE CHILD IS WITH THAT PARENT.

8 (2) “PARENTING TIME” IS ALSO KNOWN AS PHYSICAL CUSTODY,
9 VISITATION, OR ACCESS.

10 **9-103.**

11 (A) IF THE PARENTS LIVE APART, A COURT MAY AWARD LEGAL DECISION
12 MAKING OR PARENTING TIME TO EITHER PARENT OR JOINTLY TO BOTH PARENTS.

13 (B) NEITHER PARENT IS PRESUMED TO HAVE ANY RIGHT TO LEGAL
14 DECISION MAKING OR PARENTING TIME THAT IS SUPERIOR TO THE RIGHT OF THE
15 OTHER PARENT.

16 **[9-101.] 9-104.**

17 (a) In any [custody or visitation] LEGAL DECISION MAKING OR PARENTING
18 TIME proceeding, if the court has reasonable grounds to believe that a child has been
19 abused or neglected by a party to the proceeding, the court shall determine whether abuse
20 or neglect is likely to occur if [custody or visitation] LEGAL DECISION MAKING OR
21 PARENTING TIME rights are granted to the party.

22 (b) Unless the court specifically finds that there is no likelihood of further child
23 abuse or neglect by the party, the court shall deny [custody or visitation] LEGAL DECISION
24 MAKING OR PARENTING TIME rights to that party, except that the court may approve a
25 supervised [visitation] PARENTING TIME arrangement that assures the safety and the
26 physiological, psychological, and emotional well-being of the child.

27 **[9-101.1.] 9-105.**

28 (a) In this section, “abuse” has the meaning stated in § 4-501 of this article.

29 (b) In a [custody or visitation] LEGAL DECISION MAKING OR PARENTING TIME
30 proceeding, the court shall consider[, when deciding custody or visitation issues,] evidence

1 of abuse by a party against:

2 (1) the other parent of the party's child;

3 (2) the party's spouse; or

4 (3) any child residing within the party's household, including a child other
5 than the child who is the subject of the [custody or visitation] proceeding.

6 (c) If the court finds that a party has committed abuse against the other parent
7 of the party's child, the party's spouse, or any child residing within the party's household,
8 the court shall make arrangements for [custody or visitation] **LEGAL DECISION MAKING**
9 **OR PARENTING TIME** that best protect:

10 (1) the child who is the subject of the proceeding; and

11 (2) the victim of the abuse.

12 **[9-101.2.] 9-106.**

13 (a) Except as provided in subsection (b) of this section, unless good cause for the
14 award of [custody or visitation] **LEGAL DECISION MAKING OR PARENTING TIME** is
15 shown by clear and convincing evidence, a court may not award [custody of a child or
16 visitation with a child] **LEGAL DECISION MAKING OR PARENTING TIME**:

17 (1) to a parent who has been found by a court of this State to be guilty of
18 first degree or second degree murder of the other parent of the child, another child of the
19 parent, or any family member residing in the household of either parent of the child; or

20 (2) to a parent who has been found by a court of any state or of the United
21 States to be guilty of a crime that, if committed in this State, would be first degree murder
22 or second degree murder of the other parent of the child, another child of the parent, or any
23 family member residing in the household of either parent of the child.

24 (b) If it is in the best interest of the child, the court may approve a supervised
25 [visitation] **PARENTING TIME** arrangement that assures the safety and the physiological,
26 psychological, and emotional well-being of the child.

27 **[9-107.**

28 (a) (1) In this section the following words have the meanings indicated.

29 (2) (i) "Disability" means:

30 1. a physical or mental impairment that substantially limits
31 one or more of an individual's major life activities;

1 2. a record of having a physical or mental impairment that
2 substantially limits one or more of an individual's major life activities; or

3 3. being regarded as having a physical or mental impairment
4 that substantially limits one or more of an individual's major life activities.

5 (ii) "Disability" shall be construed in accordance with the ADA
6 Amendments Act of 2008, P.L. 110-325.

7 (3) "Supportive parenting services" means services that may assist an
8 individual with a disability in the effective use of techniques and methods to enable the
9 individual to discharge the individual's responsibilities to a child as successfully as an
10 individual who does not have a disability, including nonvisual techniques for individuals
11 who are blind.

12 (b) (1) In any custody or visitation proceeding, the disability of a party is
13 relevant only to the extent that the court finds, based on evidence in the record, that the
14 disability affects the best interest of the child.

15 (2) The party alleging that the disability of the other party affects the best
16 interest of the child bears the burden of proving that the disability of the other party affects
17 the best interest of the child.

18 (3) If the burden of proof is met, the party who has a disability shall have
19 the opportunity to prove that supportive parenting services would prevent a finding that
20 the disability affects the best interest of the child.

21 (4) If the court finds that the disability of a party affects the best interest
22 of the child and denies or limits custody or visitation, the court shall specifically state in
23 writing:

24 (i) the basis for the finding; and

25 (ii) the reason that the provision of supportive parenting services is
26 not a reasonable accommodation to prevent the finding.]

27 **[9-103.] 9-107.**

28 (a) A child who is 16 years old or older and who is subject to a custody order or
29 decree **OR A LEGAL DECISION MAKING OR PARENTING TIME ORDER OR DECREE** may
30 file a petition to change custody **OR LEGAL DECISION MAKING OR PARENTING TIME.**

31 (b) A petitioner under this section may file the proceeding in the petitioner's own
32 name and need not proceed by guardian or next friend.

33 (c) Notwithstanding any other provision of this article, if a petitioner under this

1 section petitions a court to amend a custody order or decree **OR A LEGAL DECISION**
2 **MAKING OR PARENTING TIME ORDER OR DECREE**, the court:

3 (1) shall hold a hearing; and

4 (2) may amend the order or decree and [place the child in the custody of]
5 **GRANT LEGAL DECISION MAKING OR PARENTING TIME TO** the parent designated by
6 the child.

7 **[9-104.] 9-108.**

8 Unless otherwise ordered by a court, access to medical, dental, and educational
9 records concerning the child may not be denied to a parent [because the parent does not
10 have physical custody of the child].

11 **[9-105.] 9-109.**

12 [In any custody or visitation proceeding, if] **IF** the court determines that a party to
13 a custody or visitation order **OR LEGAL DECISION MAKING OR PARENTING TIME ORDER**
14 has unjustifiably denied or interfered with [visitation] **THE RIGHTS** granted by [a custody
15 or visitation] **THE** order, the court may, in addition to any other remedy available to the
16 court and in a manner consistent with the best interests of the child, take any or all of the
17 following actions:

18 (1) order that the [visitation] **PARENTING TIME** be rescheduled;

19 (2) modify the custody or visitation **OR LEGAL DECISION MAKING OR**
20 **PARENTING TIME** order to require additional terms or conditions designed to ensure future
21 compliance with the order; or

22 (3) assess costs or counsel fees against the party who has unjustifiably
23 denied or interfered with [visitation] **PARENTING TIME** rights.

24 **[9-106.] 9-110.**

25 (a) (1) Except as provided in subsection (b) of this section, in any [custody or
26 visitation] **LEGAL DECISION MAKING OR PARENTING TIME** proceeding the court [may]
27 **SHALL** include as a condition of a [custody or visitation] **LEGAL DECISION MAKING OR**
28 **PARENTING TIME** order a requirement that either party provide advance written notice of
29 at least 90 days to the court, the other party, or both, of the intent to relocate the permanent
30 residence of the party or the child either within or outside the State.

31 (2) The court may prescribe the form and content of the notice requirement.

32 (3) If the court orders that notice be given to the other party, a mailing of

1 the notice by certified mail, return receipt requested, to the last known address of the other
2 party shall be deemed sufficient to comply with the notice requirement.

3 (4) If either party files a petition regarding a proposed relocation within 20
4 days of the written notice of the relocation required by paragraph (1) of this subsection, the
5 court shall set a hearing on the petition on an expedited basis.

6 (b) On a showing that notice would expose the child or either party to abuse as
7 defined in § 4–501 of this article or for any other good cause the court shall waive the notice
8 required by this section.

9 (c) If either party is required to relocate in less than the 90–day period specified
10 in the notice requirement, the court may consider as a defense to any action brought for a
11 violation of the notice requirement that:

12 (1) relocation was necessary due to financial or other extenuating
13 circumstances; and

14 (2) the required notice was given within a reasonable time after learning
15 of the necessity to relocate.

16 (d) The court may consider any violation of the notice requirement as a factor in
17 determining the merits of any subsequent proceeding involving [custody or visitation]
18 **LEGAL DECISION MAKING OR PARENTING TIME.**

19 **[9–108.] 9–111.**

20 (a) In this section:

21 (1) “deployment” means compliance with military orders received by a
22 member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National
23 Guard, or any other Reserve component to report for combat operations or other active
24 service for which the member is required to report unaccompanied by any family member
25 or that is classified by the member’s branch as remote; and

26 (2) “deployment” does not include National Guard or Reserve annual
27 training, inactive duty days, or drill weekends.

28 (b) Any order or modification of an existing child custody or visitation order **OR**
29 **LEGAL DECISION MAKING OR PARENTING TIME ORDER** issued by a court during a term
30 of a deployment of a parent shall specifically reference the deployment of the parent.

31 (c) (1) A parent who petitions the court for an order or modification of an
32 existing child custody or visitation order **OR LEGAL DECISION MAKING OR PARENTING**
33 **TIME ORDER** after returning from a deployment shall specifically reference the date of the
34 end of the deployment in the petition.

1 (IV) FOSTERING CHILDREN'S RELATIONSHIPS WITH SIBLINGS
2 AND WITH SIGNIFICANT ADULTS IN THE CHILDREN'S LIVES;

3 (2) PROVIDE CHILDREN WITH PHYSICAL AND EMOTIONAL SECURITY
4 AND PROTECTION FROM EXPOSURE TO CONFLICT AND VIOLENCE; AND

5 (3) PROVIDE FOR AN EXPEDITIOUS, THOUGHTFUL, AND CONSISTENT
6 PROCESS FOR DECISION MAKING BY COURTS TO PROTECT THE BEST INTEREST OF
7 CHILDREN.

8 9-202.

9 (A) SUBJECT TO THE PROVISIONS OF §§ 9-104, 9-105, AND 9-106 OF THIS
10 TITLE, IN DECIDING THE APPROPRIATE ALLOCATION OF LEGAL DECISION MAKING
11 OR PARENTING TIME BETWEEN THE PARTIES, THE COURT SHALL CONSIDER THE
12 FOLLOWING FACTORS:

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

15 (I) ENSURING PHYSICAL SAFETY;

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

18 (III) PROMOTING INTERPERSONAL SKILLS; AND

19 (IV) PROMOTING INTELLECTUAL AND COGNITIVE GROWTH;

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

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

25 (I) EDUCATION;

26 (II) SOCIALIZATION;

27 (III) CULTURE AND RELIGION;

28 (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, OR 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 (B) SUBJECT TO THE PROVISIONS OF §§ 9-104, 9-105, AND 9-106 OF THIS
19 TITLE, IN DECIDING THE APPROPRIATE ALLOCATION OF LEGAL DECISION MAKING
20 OR PARENTING TIME BETWEEN THE PARTIES, THE COURT MAY CONSIDER THE
21 FOLLOWING FACTORS:

22 (1) EVIDENCE OF ANY PRIOR COURT ORDERS OR AGREEMENTS
23 BETWEEN THE PARTIES, INCLUDING PRIOR AGREEMENTS CONCERNING THE
24 CHILD'S CUSTODIAL ARRANGEMENTS OR PARENTING RESPONSIBILITIES FOR THE
25 CHILD;

26 (2) THE PARENTAL RESPONSIBILITIES AND THE PARTICULAR
27 PARENTING TASKS CUSTOMARILY PERFORMED BY EACH PARTY, INCLUDING:

28 (I) TASKS AND RESPONSIBILITIES PERFORMED BEFORE THE

1 INITIATION OF LITIGATION;

2 (II) TASKS AND RESPONSIBILITIES PERFORMED DURING THE
3 PENDING LITIGATION;

4 (III) TASKS AND RESPONSIBILITIES PERFORMED AFTER THE
5 ISSUANCE OF ORDERS OF COURT; AND

6 (IV) THE EXTENT TO WHICH THE TASKS HAVE BEEN OR WILL BE
7 UNDERTAKEN BY THIRD PARTIES;

8 (3) THE PROXIMITY OF THE PARTIES' HOMES AS IT RELATES TO THEIR
9 ABILITY TO COORDINATE PARENTING TIME, SCHOOL, AND ACTIVITIES;

10 (4) THE RELATIONSHIP BETWEEN THE PARTIES, INCLUDING:

11 (I) THE ABILITY OF EACH PARTY TO EFFECTIVELY
12 COMMUNICATE WITH THE OTHER PARTY; AND

13 (II) THE ABILITY OF EACH PARTY TO CO-PARENT THE CHILD
14 WITHOUT DISRUPTION TO THE CHILD'S SOCIAL AND SCHOOL LIFE;

15 (5) THE EXTENT TO WHICH EITHER PARTY HAS INITIATED OR
16 ENGAGED IN FRIVOLOUS OR VEXATIOUS LITIGATION, AS DEFINED IN THE
17 MARYLAND RULES;

18 (6) THE CHILD'S PREFERENCE IF:

19 (I) THE CHILD IS OF SUFFICIENT AGE AND CAPACITY TO FORM
20 A PREFERENCE; AND

21 (II) THE COURT CONSIDERS THE CHILD'S POSSIBLE
22 SUSCEPTIBILITY TO MANIPULATION BY A PARTY OR BY OTHERS; AND

23 (7) ANY OTHER FACTOR THAT THE COURT CONSIDERS APPROPRIATE
24 IN DETERMINING HOW TO BEST SERVE THE PHYSICAL, DEVELOPMENTAL, AND
25 EMOTIONAL NEEDS OF THE CHILD.

26 (C) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE
27 RECORD, INCLUDING:

28 (1) THE CONSIDERATION OF EACH FACTOR LISTED IN SUBSECTION
29 (A) OF THIS SECTION;

1 **(2) THE CONSIDERATION OF ANY FACTOR LISTED IN SUBSECTION (B)**
2 **OF THIS SECTION;**

3 **(3) THE CONSIDERATION OF ANY OTHER FACTOR THAT THE COURT**
4 **CONSIDERED; AND**

5 **(4) THE WEIGHT THE COURT GAVE TO EACH FACTOR THAT THE COURT**
6 **CONSIDERED.**

7 **9-203.**

8 **(A) IF THE COURT DETERMINES THAT THE PARTIES ARE ABLE TO**
9 **COMMUNICATE AND REACH JOINT DECISIONS CONCERNING SOME OR ALL OF THE**
10 **CHILD'S NEEDS DESCRIBED IN § 9-202(A) OF THIS SUBTITLE, THE COURT MAY**
11 **AWARD:**

12 **(1) JOINT LEGAL DECISION MAKING TO BOTH PARTIES;**

13 **(2) JOINT LEGAL DECISION MAKING TO BOTH PARTIES, DESIGNATING**
14 **ONE PARTY TO MAKE FINAL DECISIONS IF THE PARTIES ARE UNABLE TO AGREE**
15 **AFTER A THOROUGH DISCUSSION OF THE ISSUES; OR**

16 **(3) JOINT LEGAL DECISION MAKING TO BOTH PARTIES, ALLOCATING**
17 **RESPONSIBILITY FOR SPECIFIC ISSUES TO EACH PARTY, IF THE PARTIES ARE**
18 **UNABLE TO AGREE AFTER A THOROUGH DISCUSSION OF THE ISSUES.**

19 **(B) IF THE COURT AWARDS JOINT LEGAL DECISION MAKING AUTHORITY**
20 **UNDER SUBSECTION (A)(1) OF THIS SECTION, NEITHER PARTY, WITHOUT**
21 **AGREEMENT OF THE OTHER PARTY OR ORDER OF THE COURT, MAY UNILATERALLY**
22 **MAKE DECISIONS INVOLVING THE CHILD'S HEALTH, EDUCATION, RELIGION,**
23 **CULTURE, OR MEDICAL CARE OR ANY OTHER MATTER OF MAJOR SIGNIFICANCE**
24 **CONCERNING THE CHILD'S LIFE OR WELFARE.**

25 **9-204.**

26 **(A) THE COURT MAY MODIFY, IN ACCORDANCE WITH THE PROVISIONS OF**
27 **THIS SUBTITLE, A CHILD CUSTODY OR VISITATION ORDER OR A LEGAL DECISION**
28 **MAKING OR PARENTING TIME ORDER IF THE COURT DETERMINES THAT THERE HAS**
29 **BEEN A MATERIAL CHANGE IN CIRCUMSTANCES SINCE THE ISSUANCE OF THE**
30 **ORDER THAT RELATES TO THE NEEDS OF THE CHILD OR THE ABILITY OF THE**
31 **PARTIES TO MEET THOSE NEEDS.**

1 **(B) A PARTY'S PROPOSAL TO RELOCATE THE RESIDENCE OF THE PARTY OR**
2 **THE CHILD IN A WAY THAT WOULD CAUSE PARENTING TIME TO BE IMPRACTICABLE**
3 **CONSTITUTES A MATERIAL CHANGE IN CIRCUMSTANCES.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2018.