

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 663

(Senator Charles)

Judicial Proceedings

Child Custody - Rebuttable Presumption of Joint Custody

This bill creates a rebuttable presumption in an initial child custody proceeding – involving the parents of a child and whether *pendente lite* or permanent – that an award of joint physical custody for approximately equal periods of time for each parent and joint legal custody is in the best interests of the child. The bill specifies factors that may be considered in determining the best interests of the child. If the court determines by a preponderance of the evidence that a joint custody arrangement is not in the best interests of the child, the court may award sole custody to one parent and must enter on the record the factors considered by the court in reaching its decision.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The rebuttable presumption established by the bill is regardless of a parent’s marital status or gender. In determining the best interests of the child, the court may consider the following factors: (1) the preferences of the child if the court determines that the child is of a sufficient emotional maturity and mental capacity, regardless of the child’s age; (2) the distance between the residences of the parents; (3) the distance between each parent’s residence and the child’s school; (4) the flexibility of each parent’s work

schedule; (5) each parent's ability to assist with after school care; and (6) any other factor the court finds relevant.

If the court determines that joint custody is not in the best interests of the child, the court must award visitation in a manner that ensures frequent and continuing contact between the child and the noncustodial parent.

Current Law:

Child Custody Determinations

Maryland courts resolve child custody disputes based on a determination of what is in the child's best interests. However, the factors to be considered by a court in making such a determination are not specified in statute but have instead been developed through case law. The criteria for judicial determination include, but are 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 (now the Supreme Court of Maryland) 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.

Custody – Evidence of Abuse or Neglect

In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court must determine whether 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 likelihood of further child abuse or neglect by the party, the court must deny custody or visitation rights to that party. However, the court is authorized to approve a supervised visitation arrangement that assures the safety and physiological, psychological, and emotional well-being of the child.

The court must consider evidence of abuse by a party against the other parent of the party's child, the party's spouse, or any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation proceeding. If the court finds that the party has committed abuse against any of these individuals, it must make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of the abuse.

Custody – Parents with Specified Convictions

Unless good cause for the award of custody or visitation with a child is shown by clear and convincing evidence, a court may not award custody or visitation to a parent who has been found guilty of first- or second-degree murder (or similar acts in another jurisdiction) of specified individuals. If it is in the best interest of the child, however, a court may approve a supervised visitation arrangement that assures the safety and the psychological, physiological, and emotional well-being of the child.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

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Analysis by: Amanda L. Douglas

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