
By: Delegates Dembrow, Montague, Genn, Dypski, Fulton, Opara, Faulkner, E. Burns, Benson, Perry, O'Donnell, Workman, and Valderrama

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Child Custody - Joint Legal Custody**

3 FOR the purpose of creating a rebuttable presumption of joint legal custody in certain
4 child custody proceedings under certain circumstances; establishing that the
5 presumption of joint legal custody may be rebutted by certain evidence under
6 certain circumstances; requiring a court to make residential arrangements for a
7 child under certain circumstances; authorizing a court to provide for certain types of
8 residential arrangements; requiring a court to consider certain factors in making
9 residential arrangements for a child; clarifying that an award of joint legal custody
10 does not affect certain other considerations; requiring a court to award sole custody
11 of a child under certain circumstances; requiring a court to consider certain factors
12 when awarding sole custody; providing that this Act may not be considered a
13 material change of circumstances under certain circumstances; providing for the
14 application of this Act; defining certain terms; and generally relating to child
15 custody and visitation.

16 BY renumbering

17 Article - Family Law
18 Section 9-101 and 9-101.1 through 9-106, respectively
19 to be Section 9-104 through 9-110, respectively
20 Annotated Code of Maryland
21 (1991 Replacement Volume and 1996 Supplement)

22 BY adding to

23 Article - Family Law
24 Section 9-101, 9-102, and 9-103
25 Annotated Code of Maryland
26 (1991 Replacement Volume and 1996 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That Section(s) 9-101 and 9-101.1 through 9-106, respectively, of Article
29 - Family Law of the Annotated Code of Maryland be renumbered to be Section(s) 9-104
30 through 9-110, respectively.

2

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
2 read as follows:

3 **Article - Family Law**

4 9-101.

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) "JOINT LEGAL CUSTODY" MEANS THAT BOTH PARENTS OF A CHILD
8 SHARE EQUALLY THE RIGHTS AND DUTIES TO MAKE LONG-RANGE DECISIONS
9 INVOLVING MATTERS OF MAJOR SIGNIFICANCE IN THE LIFE AND WELFARE OF THE
10 CHILD, INCLUDING DECISIONS CONCERNING THE CHILD'S:

11 (1) EDUCATION;

12 (2) RELIGIOUS TRAINING AND PRACTICE;

13 (3) DISCIPLINE; AND

14 (4) MEDICAL CARE.

15 (C) "JOINT PHYSICAL CUSTODY" MEANS RESIDENTIAL ARRANGEMENTS FOR
16 A CHILD THAT PROVIDE FOR FREQUENT AND CONTINUING CONTACT BETWEEN THE
17 CHILD AND EACH PARENT.

18 (D) "SHARED PARENTING AGREEMENT" MEANS AN AGREEMENT OR A COURT
19 ORDER THAT DEFINES AND SPECIFICALLY DELINEATES:

20 (1) THE RIGHTS AND RESPONSIBILITIES OF EACH PARENT WITH
21 RESPECT TO THE RESIDENCE, CARE, AND NURTURING OF THE CHILD; AND

22 (2) THE RESIDENTIAL AND TELEPHONE CONTACT OF EACH PARENT
23 WITH THE CHILD.

24 (E) "VISITATION" MEANS RESIDENTIAL ARRANGEMENTS FOR A CHILD THAT
25 PROVIDE THAT A CHILD WHO RESIDES PRIMARILY WITH ONE PARENT SHALL HAVE
26 CONTINUING RESIDENTIAL AND TELEPHONE CONTACT WITH THE OTHER PARENT
27 ON A REGULAR BASIS.

28 9-102.

29 (A) IN AN INITIAL CUSTODY PROCEEDING, WHETHER PENDENTE LITE OR
30 PERMANENT, INVOLVING THE PARENTS OF A MINOR CHILD, THERE IS A
31 REBUTTABLE PRESUMPTION THAT AN AWARD OF JOINT LEGAL CUSTODY IS IN THE
32 BEST INTERESTS OF THE CHILD.

33 (B) THE PRESUMPTION OF JOINT LEGAL CUSTODY UNDER SUBSECTION (A)
34 OF THIS SECTION MAY BE REBUTTED BY EVIDENCE THAT AN AWARD OF JOINT
35 LEGAL CUSTODY IS NOT IN THE BEST INTERESTS OF THE CHILD, INCLUDING
36 EVIDENCE THAT A PARENT HAS:

37 (1) KNOWINGLY AND VOLUNTARILY ABANDONED THE CHILD;

3

1 (2) WITHOUT JUST CAUSE, INTENTIONALLY HIDDEN THE CHILD FROM
2 THE OTHER PARENT;

3 (3) COMMITTED CHILD ABUSE OR NEGLECT AS DEFINED IN § 5-701 OF
4 THIS ARTICLE; OR

5 (4) COMMITTED ABUSE AS DEFINED IN § 4-501 OF THIS ARTICLE.

6 (C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF THE
7 COURT AWARDS JOINT LEGAL CUSTODY, THE ORDER SHALL PROVIDE FOR
8 RESIDENTIAL ARRANGEMENTS FOR THE CHILD.

9 (2) IN DETERMINING THE RESIDENTIAL ARRANGEMENTS FOR THE
10 CHILD, THE COURT MAY PROVIDE FOR:

11 (I) JOINT PHYSICAL CUSTODY;

12 (II) A SHARED PARENTING AGREEMENT; OR

13 (III) VISITATION.

14 (3) IN DETERMINING THE RESIDENTIAL ARRANGEMENTS FOR THE
15 CHILD, THE COURT SHALL:

16 (I) CONSIDER THE BEST INTERESTS OF THE CHILD; AND

17 (II) GIVE DUE CONSIDERATION TO ANY RESIDENTIAL AND
18 VISITATION ARRANGEMENTS PROPOSED BY THE PARENTS OF THE CHILD.

19 (4) THIS SUBSECTION DOES NOT LIMIT THE AUTHORITY OF THE COURT
20 TO AWARD JOINT LEGAL CUSTODY OF A CHILD WITHOUT PROVIDING FOR JOINT
21 PHYSICAL CUSTODY OF THE CHILD.

22 (D) AN AWARD OF JOINT LEGAL CUSTODY DOES NOT AFFECT THE
23 DETERMINATION BY THE COURT REGARDING THE DUTY TO PROVIDE FOR THE
24 FINANCIAL SUPPORT OF THE CHILD UNDER TITLE 12 OF THIS ARTICLE.

25 (E) AN AWARD OF JOINT LEGAL CUSTODY DOES NOT AFFECT THE
26 DETERMINATION BY THE COURT REGARDING THE USE AND POSSESSION OF THE
27 FAMILY HOME AND FAMILY USE PERSONAL PROPERTY UNDER §§ 8-207 THROUGH
28 8-213 OF THIS ARTICLE.

29 9-103.

30 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IN AN INITIAL CUSTODY
31 PROCEEDING, WHETHER PENDENTE LITE OR PERMANENT, INVOLVING THE
32 PARENTS OF A MINOR CHILD, IF THE COURT DOES NOT AWARD JOINT LEGAL
33 CUSTODY UNDER § 9-102 OF THIS SUBTITLE, THE COURT SHALL AWARD SOLE
34 CUSTODY TO ONE OF THE PARENTS IN ACCORDANCE WITH THE BEST INTERESTS OF
35 THE CHILD.

36 (B) IN DETERMINING AN AWARD OF SOLE CUSTODY THAT WOULD BE IN THE
37 BEST INTERESTS OF THE CHILD, THE COURT SHALL CONSIDER THE FOLLOWING
38 FACTORS:

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1 (1) THE GENERAL FITNESS, CHARACTER, AND REPUTATION OF THE
2 PARENTS OF THE CHILD;

3 (2) THE PREFERENCES OF THE PARENTS OF THE CHILD AND ANY
4 AGREEMENTS MADE BETWEEN THE PARENTS;

5 (3) THE PREFERENCES OF THE CHILD IF THE CHILD IS OF SUFFICIENT
6 AGE AND CAPACITY TO FORM A RATIONAL JUDGMENT;

7 (4) THE AGE, SEX, AND HEALTH OF THE CHILD;

8 (5) THE MATERIAL OPPORTUNITIES AFFECTING THE FUTURE LIFE OF
9 THE CHILD;

10 (6) THE RESIDENCES OF THE PARENTS AND THE OPPORTUNITIES FOR
11 VISITATION;

12 (7) THE LENGTH OF ANY SEPARATION OF THE CHILD FROM A PARENT;

13 (8) WHETHER EITHER PARENT HAS VOLUNTARILY ABANDONED THE
14 CHILD;

15 (9) THE POTENTIALITY OF MAINTAINING NATURAL FAMILY
16 RELATIONSHIPS;

17 (10) THE WILLINGNESS OF BOTH PARENTS TO RESPECT THE
18 RELATIONSHIP OF THE CHILD WITH THE OTHER PARENT;

19 (11) WHETHER EITHER PARENT HAS, WITHOUT JUST CAUSE,
20 INTENTIONALLY HIDDEN THE CHILD FROM THE OTHER PARENT;

21 (12) WHETHER EITHER PARENT HAS COMMITTED CHILD ABUSE OR
22 NEGLECT AS DEFINED UNDER § 5-701 OF THIS ARTICLE;

23 (13) WHETHER EITHER PARENT HAS COMMITTED ABUSE AS DEFINED IN
24 § 4-501 OF THIS ARTICLE; AND

25 (14) ANY OTHER FACTOR THAT THE COURT CONSIDERS NECESSARY OR
26 APPROPRIATE IN ORDER TO REACH A DETERMINATION REGARDING SOLE
27 CUSTODY THAT WOULD BE IN THE BEST INTERESTS OF THE CHILD.

28 (C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF THE
29 COURT AWARDS SOLE CUSTODY TO ONE PARENT, THE ORDER SHALL PROVIDE FOR
30 RESIDENTIAL ARRANGEMENTS FOR THE CHILD.

31 (2) IN DETERMINING THE RESIDENTIAL ARRANGEMENTS FOR THE
32 CHILD, THE COURT MAY PROVIDE FOR:

33 (I) A SHARED PARENTING ARRANGEMENT; OR

34 (II) VISITATION.

35 (3) IN DETERMINING THE RESIDENTIAL ARRANGEMENTS FOR THE
36 CHILD, THE COURT SHALL:

5

1 (I) CONSIDER THE BEST INTERESTS OF THE CHILD; AND

2 (II) GIVE DUE CONSIDERATION TO ANY RESIDENTIAL AND
3 VISITATION ARRANGEMENTS PROPOSED BY THE PARENTS OF THE CHILD.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be
5 considered a material change of circumstances for purposes of modifying court orders for
6 child custody in cases where initial pleadings were filed before October 1, 1997.

7 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 1997 and shall apply only to actions filed on or after October 1, 1997 for cases
9 in which no prior custody order has been issued.