

HOUSE BILL 425

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HB 833/97 - JUD

1998 Regular Session
8r0099

By: **Delegates Dembrow, Montague, Genn, Dypski, Fulton, Faulkner, E.
Burns, Perry, O'Donnell, Workman, Valderrama, Palumbo, Bissett, and
Frank**

Introduced and read first time: February 2, 1998
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Child Custody - Rebuttable Presumption of Joint Legal**
3 **Custody**

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

17 BY renumbering
18 Article - Family Law
19 Section 9-101 and 9-101.1 through 9-106, respectively
20 to be Section 9-104 through 9-110, respectively
21 Annotated Code of Maryland
22 (1991 Replacement Volume and 1997 Supplement)

23 BY adding to
24 Article - Family Law
25 Section 9-101, 9-102, and 9-103
26 Annotated Code of Maryland
27 (1991 Replacement Volume and 1997 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 9-101 and 9-101.1 through 9-106, respectively, of

1 Article - Family Law of the Annotated Code of Maryland be renumbered to be
2 Section(s) 9-104 through 9-110, respectively.

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

5 **Article - Family Law**

6 9-101.

7 (A) IN §§ 9-102 AND 9-103 OF THIS SUBTITLE THE FOLLOWING WORDS HAVE
8 THE MEANINGS INDICATED.

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

13 (1) EDUCATION;

14 (2) RELIGIOUS TRAINING;

15 (3) DISCIPLINE; AND

16 (4) MEDICAL CARE.

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

20 (D) "VISITATION" MEANS RESIDENTIAL ARRANGEMENTS FOR A CHILD THAT
21 PROVIDE THAT A CHILD WHO RESIDES PRIMARILY WITH ONE PARENT SHALL HAVE
22 CONTINUING RESIDENTIAL AND TELEPHONE CONTACT WITH THE OTHER PARENT
23 ON A REGULAR BASIS.

24 9-102.

25 (A) IN AN INITIAL CUSTODY PROCEEDING, WHETHER PENDENTE LITE OR
26 PERMANENT, INVOLVING THE PARENTS OF A MINOR CHILD, THERE IS A
27 REBUTTABLE PRESUMPTION THAT AN AWARD OF JOINT LEGAL CUSTODY IS IN THE
28 BEST INTERESTS OF THE CHILD.

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

33 (1) KNOWINGLY AND VOLUNTARILY ABANDONED THE CHILD;

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

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

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

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

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

12 (I) JOINT PHYSICAL CUSTODY; OR

13 (II) 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
18 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 PARENTS
32 OF A MINOR CHILD, IF THE COURT DOES NOT AWARD JOINT LEGAL CUSTODY UNDER
33 § 9-102 OF THIS SUBTITLE, THE COURT SHALL AWARD SOLE CUSTODY TO ONE OF THE
34 PARENTS IN ACCORDANCE WITH THE BEST INTERESTS OF THE CHILD.

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

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

6 (2) THE PREFERENCES OF THE PARENTS OF THE CHILD AND ANY
7 AGREEMENTS MADE BETWEEN THE PARENTS;

8 (3) THE PREFERENCE OF THE CHILD IF THE CHILD IS OF SUFFICIENT
9 AGE AND CAPACITY TO FORM A RATIONAL JUDGMENT;

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

11 (5) THE POTENTIALITY OF MAINTAINING NATURAL FAMILY
12 RELATIONSHIPS;

13 (6) THE WILLINGNESS OF EACH PARENT TO RESPECT THE
14 RELATIONSHIP OF THE CHILD WITH THE OTHER PARENT;

15 (7) WHETHER EITHER PARENT HAS VOLUNTARILY ABANDONED THE
16 CHILD;

17 (8) WHETHER EITHER PARENT HAS, WITHOUT JUST CAUSE,
18 INTENTIONALLY HIDDEN THE CHILD FROM THE OTHER PARENT;

19 (9) WHETHER EITHER PARENT HAS COMMITTED AN ACT OF CHILD
20 ABUSE OR NEGLECT AS DEFINED IN § 5-701 OF THIS ARTICLE;

21 (10) WHETHER EITHER PARENT HAS COMMITTED AN ACT OF ABUSE AS
22 DEFINED IN § 4-501 OF THIS ARTICLE; AND

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

26 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE COURT
27 AWARDS SOLE CUSTODY TO ONE PARENT, THE ORDER SHALL PROVIDE FOR
28 VISITATION.

29 (2) IN DETERMINING VISITATION FOR THE CHILD, THE COURT SHALL:

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

31 (II) GIVE DUE CONSIDERATION TO ANY ARRANGEMENTS
32 PROPOSED BY THE PARENTS OF THE CHILD.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be
34 considered a material change of circumstances for purposes of modifying child custody
35 orders issued before the effective date of this Act.

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall apply only
2 to initial custody cases filed on or after the effective date of this Act and may not be
3 applied or interpreted to have any effect on or application to cases for modification of
4 custody filed after an order for permanent custody has been issued.

5 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take
6 effect October 1, 1998.