SENATE BILL 571

Unofficial Copy D4 HB 833/97 - JUD 1998 Regular Session 8lr2403 CF HB 425

By: Senator Hafer

Introduced and read first time: February 6, 1998

Assigned to: Judicial Proceedings

A BILL ENTITLED

	ΔN	Δ ("I"	concerning
1	/ 11 A	Λ CI	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
- in making residential arrangements for a child; clarifying that an award of joint
- 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
- consider certain factors when awarding sole custody; providing that this Act
- may not be considered a material change of circumstances under certain
- circumstances; providing for the application of this Act; defining certain terms;
- 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
- 30 Article Family Law of the Annotated Code of Maryland be renumbered to be
- 31 Section(s) 9-104 through 9-110, respectively.

- 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 $\S\S$ 9-102 AND 9-103 OF THIS SUBTITLE THE FOLLOWING WORDS HAVE 6 THE MEANINGS INDICATED.
- 7 (B) "JOINT LEGAL CUSTODY" MEANS THAT BOTH PARENTS OF A CHILD SHARE
- 8 EQUALLY THE RIGHTS AND DUTIES TO MAKE LONG-RANGE DECISIONS INVOLVING
- 9 MATTERS OF MAJOR SIGNIFICANCE IN THE LIFE AND WELFARE OF THE CHILD.
- 10 INCLUDING DECISIONS CONCERNING THE CHILD'S:
- 11 (1) EDUCATION;
- 12 (2) RELIGIOUS TRAINING;
- 13 (3) DISCIPLINE; AND
- 14 (4) MEDICAL CARE.
- 15 (C) "JOINT PHYSICAL CUSTODY" MEANS RESIDENTIAL ARRANGEMENTS FOR A
- 16 CHILD THAT PROVIDE FOR FREQUENT AND CONTINUING CONTACT BETWEEN THE
- 17 CHILD AND EACH PARENT.
- 18 (D) "VISITATION" MEANS RESIDENTIAL ARRANGEMENTS FOR A CHILD THAT
- 19 PROVIDE THAT A CHILD WHO RESIDES PRIMARILY WITH ONE PARENT SHALL HAVE
- 20 CONTINUING RESIDENTIAL AND TELEPHONE CONTACT WITH THE OTHER PARENT
- 21 ON A REGULAR BASIS.
- 22 9-102.
- 23 (A) IN AN INITIAL CUSTODY PROCEEDING, WHETHER PENDENTE LITE OR
- 24 PERMANENT, INVOLVING THE PARENTS OF A MINOR CHILD, THERE IS A
- 25 REBUTTABLE PRESUMPTION THAT AN AWARD OF JOINT LEGAL CUSTODY IS IN THE
- 26 BEST INTERESTS OF THE CHILD.
- 27 (B) THE PRESUMPTION OF JOINT LEGAL CUSTODY UNDER SUBSECTION (A) OF
- 28 THIS SECTION MAY BE REBUTTED BY EVIDENCE THAT AN AWARD OF JOINT LEGAL
- 29 CUSTODY IS NOT IN THE BEST INTERESTS OF THE CHILD, INCLUDING EVIDENCE
- 30 THAT A PARENT HAS:
- 31 (1) KNOWINGLY AND VOLUNTARILY ABANDONED THE CHILD;
- 32 (2) WITHOUT JUST CAUSE, INTENTIONALLY HIDDEN THE CHILD FROM
- 33 THE OTHER PARENT;

- **SENATE BILL 571** COMMITTED AN ACT OF CHILD ABUSE OR NEGLECT AS DEFINED IN § (3) 2 5-701 OF THIS ARTICLE; OR (4) COMMITTED AN ACT OF ABUSE AS DEFINED IN § 4-501 OF THIS 4 ARTICLE. SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF THE (C) (1) 6 COURT AWARDS JOINT LEGAL CUSTODY, THE ORDER SHALL PROVIDE FOR 7 RESIDENTIAL ARRANGEMENTS FOR THE CHILD. (2) IN DETERMINING THE RESIDENTIAL ARRANGEMENTS FOR THE 9 CHILD, THE COURT MAY PROVIDE FOR: 10 (I) JOINT PHYSICAL CUSTODY; OR 11 (II)VISITATION. 12 IN DETERMINING THE RESIDENTIAL ARRANGEMENTS FOR THE (3) 13 CHILD. THE COURT SHALL: 14 (I) CONSIDER THE BEST INTERESTS OF THE CHILD; AND GIVE DUE CONSIDERATION TO ANY RESIDENTIAL 15 (II)16 ARRANGEMENTS PROPOSED BY THE PARENTS OF THE CHILD. 17 THIS SUBSECTION DOES NOT LIMIT THE AUTHORITY OF THE COURT 18 TO AWARD JOINT LEGAL CUSTODY OF A CHILD WITHOUT PROVIDING FOR JOINT 19 PHYSICAL CUSTODY OF THE CHILD. AN AWARD OF JOINT LEGAL CUSTODY DOES NOT AFFECT THE 20 (D)
- 21 DETERMINATION BY THE COURT REGARDING THE DUTY TO PROVIDE FOR THE
- 22 FINANCIAL SUPPORT OF THE CHILD UNDER TITLE 12 OF THIS ARTICLE.
- 23 AN AWARD OF JOINT LEGAL CUSTODY DOES NOT AFFECT THE (E)
- 24 DETERMINATION BY THE COURT REGARDING THE USE AND POSSESSION OF THE
- 25 FAMILY HOME AND FAMILY USE PERSONAL PROPERTY UNDER §§ 8-207 THROUGH
- 26 8-213 OF THIS ARTICLE.
- 27 9-103.
- SUBJECT TO SUBSECTION (B) OF THIS SECTION, IN AN INITIAL CUSTODY 28
- 29 PROCEEDING, WHETHER PENDENTE LITE OR PERMANENT, INVOLVING THE PARENTS
- 30 OF A MINOR CHILD, IF THE COURT DOES NOT AWARD JOINT LEGAL CUSTODY UNDER
- 31 § 9-102 OF THIS SUBTITLE. THE COURT SHALL AWARD SOLE CUSTODY TO ONE OF THE
- 32 PARENTS IN ACCORDANCE WITH THE BEST INTERESTS OF THE CHILD.
- IN DETERMINING AN AWARD OF SOLE CUSTODY THAT WOULD BE IN THE
- 34 BEST INTERESTS OF THE CHILD, THE COURT SHALL CONSIDER THE FOLLOWING
- 35 FACTORS:

- **SENATE BILL 571** THE GENERAL FITNESS, CHARACTER, AND REPUTATION OF THE (1) 2 PARENTS OF THE CHILD: THE PREFERENCES OF THE PARENTS OF THE CHILD AND ANY 4 AGREEMENTS MADE BETWEEN THE PARENTS: THE PREFERENCE OF THE CHILD IF THE CHILD IS OF SUFFICIENT 6 AGE AND CAPACITY TO FORM A RATIONAL JUDGMENT; 7 THE AGE, SEX, AND HEALTH OF THE CHILD: (4) THE POTENTIALITY OF MAINTAINING NATURAL FAMILY 8 (5) 9 RELATIONSHIPS: 10 (6)THE WILLINGNESS OF EACH PARENT TO RESPECT THE 11 RELATIONSHIP OF THE CHILD WITH THE OTHER PARENT; 12 (7) WHETHER EITHER PARENT HAS VOLUNTARILY ABANDONED THE 13 CHILD: WHETHER EITHER PARENT HAS, WITHOUT JUST CAUSE, 14 15 INTENTIONALLY HIDDEN THE CHILD FROM THE OTHER PARENT; WHETHER EITHER PARENT HAS COMMITTED AN ACT OF CHILD 17 ABUSE OR NEGLECT AS DEFINED IN § 5-701 OF THIS ARTICLE; WHETHER EITHER PARENT HAS COMMITTED AN ACT OF ABUSE AS 19 DEFINED IN § 4-501 OF THIS ARTICLE; AND ANY OTHER FACTOR THAT THE COURT CONSIDERS NECESSARY OR 20 (11)21 APPROPRIATE IN ORDER TO REACH A DETERMINATION REGARDING SOLE CUSTODY 22 THAT WOULD BE IN THE BEST INTERESTS OF THE CHILD. 23 SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE COURT (C) (1) 24 AWARDS SOLE CUSTODY TO ONE PARENT, THE ORDER SHALL PROVIDE FOR 25 VISITATION. 26 (2) IN DETERMINING VISITATION FOR THE CHILD, THE COURT SHALL: 27 CONSIDER THE BEST INTERESTS OF THE CHILD; AND (I) GIVE DUE CONSIDERATION TO ANY ARRANGEMENTS 28 (II)29 PROPOSED BY THE PARENTS OF THE CHILD.
- 30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be
- 31 considered a material change of circumstances for purposes of modifying child custody
- 32 orders issued before the effective date of this Act.
- 33 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall apply only
- 34 to initial custody cases filed on or after the effective date of this Act and may not be

- 1 applied or interpreted to have any effect on or application to cases for modification of 2 custody filed after an order for permanent custody has been issued.
- SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take
- 4 effect October 1, 1998.