

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

House Bill 1062
 Judiciary

(Delegate Montague, *et al.*)

Best Interests of Children Act of 2002

This bill establishes procedures and principles governing the allocation of custodial and decision-making responsibilities for a minor child when the parents do not live together.

The bill has prospective application and is effective January 1, 2003.

Fiscal Summary

State Effect: Potentially significant increase in expenditures. Total expenditures increase by at least \$2.1 million in FY 2003. Future year expenditures reflect annualization and inflation. Potential general fund revenue increase due to new monetary penalty provisions.

(\$ in millions)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	-	-	-	-	-
GF Expenditure	2.1	2.8	2.9	3.1	3.2
Net Effect	(\$2.1)	(\$2.8)	(\$2.9)	(\$3.1)	(\$3.2)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potentially significant increase in revenues, expenditures, and workloads for circuit courts. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill provides a declaration by the General Assembly that it is in the public interest of the State to ensure that the best interest of children is the court's primary concern in allocation of custodial and visitation responsibility and decision-making authority. The bill further states that the primary objective of the subtitle is to serve a child's best interest by facilitating stability of the child, parental planning and agreement about the child's residential arrangements and upbringing, continuity of existing parent-child attachments, meaningful contact between a child and each parent, care taking relationships by those who love and can care for the child, security from the child's exposure to physical and emotional harm, and expeditious, predictable decision-making. The bill also states that the objective of the General Assembly is to achieve fairness between the parties.

Part I. Objective and Parties

This bill provides that persons with a right to be notified of and participate in an action include: (1) the legal parent of a child; (2) an adult allocated custodial and visitation responsibility or decision-making authority under a prior order or parenting plan; and (3) persons that were parties to a prior order establishing child custody and visitation. The bill authorizes the court in exceptional circumstances to grant other persons and public agencies permission to intervene upon a determination that it is in the child's best interests.

Part II. Parenting Plans

The bill requires a court to include the agreement of the parties in a parenting plan approved by the court unless the agreement is not knowing or voluntary or would be harmful to the child. It authorizes the court to hold an evidentiary hearing to determine whether there is a factual basis that child abuse has occurred and if so, requires the court to order appropriate protective measures. The court is required to inform parents about how to prepare a parenting plan.

The bill provides for temporary parenting plans, the amendment and termination of temporary parenting plans (temporary plans), and the criteria to be used in determining a temporary plan. Either parent may move to have a temporary plan entered as a part of a temporary order and must file and serve a proposed temporary plan by motion. If contested, the other parent shall serve a responsive proposed parenting plan. The bill provides that the temporary plan may be supported by relevant evidence and specifies the contents of the plan.

If allocation of decision-making authority is not made, the bill states neither parent may make a decision for the child other than day to day decisions. A party may make a

motion to show cause, and the court may enter a temporary order under the bill that includes a temporary plan upon a showing of necessity. Amendment to a temporary plan may be made if the amendment is needed due to the limiting factors in a plan (discussed below) and is in the best interests of the child. Upon credible evidence of a limiting factor in a plan, the court is required to issue a temporary order limiting or denying access to the child. Expedited procedures are to be instituted to facilitate prompt issuance of a plan.

The bill also provides for the proposal of permanent parenting plans (permanent plans) by parties seeking judicial allocation of custodial and visitation responsibility and decision-making authority, criteria for the plans, and the process for the issuance of the permanent plans. The court is to maintain the confidentiality of the information submitted if the person giving the information has a reasonable fear of domestic abuse from disclosure of the information.

The court is required to develop a process to identify cases in which there is credible information that abuse or neglect of a child or domestic violence has occurred. The elements of the process are set forth in the bill.

The bill requires a court to allocate custodial and visitation time based on the child's best interest taking into consideration certain factors. The bill generally provides that the court shall allocate custodial and visitation time so that the proportion of time the child spends with each parent approximates the time the parent spent performing care taking responsibilities prior to separation or to the filing of the action if the parents never lived together. Unless otherwise resolved by agreement of the parents or manifestly harmful to the child, other limiting factors, or the best interest of the child as specified in the bill, may affect the court's allocation of custodial or visitation responsibility.

The bill provides that unless otherwise resolved by agreement of the parents, the court shall allocate authority for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interest in light of factors as specified in the bill.

Unless otherwise provided or agreed to by the parents, each parent who is exercising custodial or visitation responsibility will be given sole responsibility for day-to-day decisions for the child. The court shall determine whether a parent who would otherwise be allocated responsibility under the parenting plan has committed abuse, neglect or interfered persistently and unreasonably with the other parent's access to the child, on request of a parent or on receipt of credible information by the courts. If so, the court is required to consider limiting factors as specified in the bill and impose limitations to protect the child or the child's parent from harm.

Part III. Fact Finding

The bill authorizes the court to order an investigation and written report in determining any issue relevant to proceedings established in the Family Law Article. The investigator is required to deliver a report to counsel and to any party not represented by counsel at least ten days prior to a hearing. The bill also permits the court to appoint a guardian ad litem to represent the child's best interest and, if allegations of domestic abuse have been made, the court is required to order an investigation or appoint a guardian ad litem unless satisfied that necessary information will be adequately presented. Additionally, the bill authorizes the court to interview the child in chambers or to direct another person to interview the child to obtain information related to the case.

Part IV. Modification of a Parenting Plan

A court is authorized to modify a parenting plan under the bill upon a finding that a substantial change in circumstances of the child or parents exists, that modification is necessary for the best interests of the child, and that the change or modification is based on facts not known or that have arisen since the entry of the prior order. The court may also modify a parenting plan on the existence of exceptional circumstances that were not contemplated or intended and are manifestly harmful to the child in a specific way. The bill specifies that certain occurrences do not justify a modification unless the parties have agreed otherwise or specified harm to the child is shown.

A court may modify the provisions of a parenting plan without showing changed circumstances if it is in the child's best interests and the modification: (1) reflects a de facto arrangement that is not the result of domestic violence and has existed for at least six months; (2) is a minor modification; or (3) is necessary to accommodate the reasonable and firm preferences of a child over 14 years of age.

Part V. Enforcement of Parenting Plans

The bill requires the court to enforce a remedy specified in a parenting plan if, upon a parental complaint, the court finds a parent violated a provision of a parenting plan intentionally and without good cause. If no remedies are provided in the parenting plan or are inadequate, the court may order an appropriate remedy, including specific remedies identified in the bill that include a modification of the plan, civil penalties, and attorneys fees and costs.

Part VI. Miscellaneous Provisions

Under the bill, each parent has full and equal access to a child's educational, medical, and juvenile court records normally available to a parent absent a court order to the contrary. Neither parent may veto access to a record requested by the other parent. The bill specifies the types of educational records a parent has access to and provides that each parent has the right to participate in organizations of parents at the child's school and to arrange appointments and parent-teacher conferences. The bill provides that a parent cannot be compelled to attend a parent-teacher conference jointly with the other parent. The bill also provides that each parent is required to consult with the other parent prior to elective surgery or, if possible, emergency surgery being performed on a child.

Effective Date

The bill is effective January 1, 2003.

Current Law: Maryland courts make child custody determinations based on a determination of "what is in the child's best interests." *Taylor v. Taylor*, 306 Md. 290, 500 A.2d 964 (1986). In a custody dispute between the child's parents, the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments. The criteria for judicial determination includes, but is not limited to: (1) the fitness of the parents; (2) the character and reputation of the parties; (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. See: *Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

In addition to the factors specified above, in cases in which the court is considering an award of joint custody, the court examines 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. See: *Taylor v. Taylor*, 306 Md. 290, 508 A.2d 964 (1986).

Statutory provisions state that if the court has reasonable grounds to believe that a child has been abused or neglected by a party to a custody or visitation 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 is required to deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in a manner consistent with the best interests of the child, take the following actions: (1) order that the visitation be rescheduled; (2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order; or (3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.

Also, the court may include as a condition of a custody or visitation order a requirement that either party provide 45 days advance written notice to the court and the other party of an intent to relocate the permanent residence of the party or the child either within or outside the State. Unless otherwise ordered by a court, under current law access to medical, dental, and educational records concerning the child may not be denied to a parent because the parent does not have physical custody of the child.

In an action for divorce in which issues of child support, custody, or visitation are raised, the court may require all parties to participate in an educational seminar that is designed to educate parents about the effects and to minimize the disruption of a divorce on the lives of children. The Court of Appeals has adopted Maryland Rule 9-204.1 to implement the statute, and provides that the content of the seminar is required to consist of one or two sessions on specified topics, totaling six hours.

If a party who has been ordered to attend a seminar fails to do so, Maryland Rules prohibit the court from using its contempt powers to compel attendance or to punish the party for failure to attend. However, the court may consider the failure as a factor in determining custody and visitation. Payment for the seminar may be compelled by order of court and assessed among the parties as directed by the court.

Mediation may be ordered under Maryland Rules in child custody and visitation disputes or in actions to modify an existing order or judgment as to custody or visitation and in a proceeding for contempt by reason of noncompliance with an order or judgment governing custody or visitation. The court is required to determine whether: (1) both parties are represented by counsel; (2) mediation of the dispute as to custody or visitation is appropriate and would likely be beneficial to the parties or the child; and (3) a properly

qualified mediator is available to mediate that dispute. If a party alleges in good faith that there is a genuine issue of physical or sexual abuse of the party or child, and that, as a result, mediation would be inappropriate, the court may not order mediation.

The Rules also provide that if the parties reach a proposed agreement on some or all of the disputed issues, the mediator shall prepare a written draft of the agreement and send copies of it to the parties and their attorneys. If the agreement is approved as submitted or as modified by the parties, the mediator shall submit it to the court for approval and entry as an order. If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. Except for an agreement submitted to the court, no statement or writing made in the course of mediation is subject to discovery or admissible in evidence in any proceeding unless the parties agree otherwise.

State/Local Fiscal Effect: The bill would increase the workloads of the circuit courts to a potentially significant extent. The numerous procedures that must be followed and factors that must be considered would result in more court time for each case.

The Administrative Office of the Courts (AOC) advises that in fiscal 2001, 8,915 referrals for co-parenting education were offered in the circuit courts. Co-parenting education is provided only in contested cases. An expansion to uncontested cases would require significant new resources. At a minimum, a co-parenting program at a cost of \$8,000 would be needed in Garrett County. Additional attorneys would also be needed to provide advice for unrepresented parties who need to develop parenting plans. AOC advises that three attorney advisers each would be needed in Prince George's and Montgomery counties. Two advisers each would be needed in Baltimore County and Baltimore City. One position each would be needed in Anne Arundel, Charles, Harford, and Washington counties. In the other 16 jurisdictions, one-half of a position would be needed.

To screen cases for domestic violence and child abuse issues, a minimum of one screener would be needed in all 24 jurisdictions.

To provide for an investigation where allegations of domestic abuse have been made, AOC estimates that 1,000 new investigations would be needed annually at a cost of \$500 per case. For fiscal 2003, the costs would be as follows:

Salaries	\$1,706,139
Custody Investigations	375,000
Class Development	8,000
Other Operating Expenses	<u>4,485</u>
Total FY 2003 Expenditures	\$2,093,624

Future year costs reflect: (1) full salaries with 3.5% increases each year and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenditures.

Some of the bill's provisions could require expenditures by the State and/or local governments. For example, the bill requires the exchange of children in some situations to be done through an intermediary or in a protected setting. This provision could require the use of visitation centers which not all jurisdictions have. AOC advises that a visitation center that is open 15 hours per week costs approximately \$55,000 to \$60,000 per year to operate with appropriate professional staff.

In addition to the costs identified by AOC, due to the large number of variables involved, there may be other significant operating expenditures that cannot be reliably estimated at this time.

It is expected that AOC could prepare the required report using existing budgeted resources.

Small Business Effect: Small businesses providing court-related services could benefit from the bill (e.g., attorneys, investigators, psychologists, visitation centers, and mediators).

Additional Information

Prior Introductions: A similar bill, HB 1398 of the 2000 session, was withdrawn after a hearing by the Judiciary Committee.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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