

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1372

(Delegate McComas, *et al.*)

Judiciary

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Task Force on Child Custody Decisions

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This bill establishes a Task Force on Child Custody Decisions, staffed by the Department of Family Administration in the Administrative Office of the Courts. The task force must be appointed, organized, and begin deliberations no later than December 1, 2006.

An interim report of findings and recommendations is due by December 1, 2007, and a final report is due by December 1, 2008. The bill terminates May 31, 2009.

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Fiscal Summary

**State Effect:** Any expense reimbursements for task force members and staffing costs for the Department of Family Administration in the Administrative Office of the Courts are assumed to be minimal and absorbable within existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The task force is required to study increasing the flexibility of custody orders, reducing the number of legal battles in child custody and visitation proceedings, and the elimination of the adverse effects of child custody and visitation litigation. The task force must also study the improvement of future relations between parties in custody and visitation proceedings, how to increase the involvement of both parents in raising their children, and how to create healthier families. The task force must study the

standards relating to statutory and case management reform to improve decision making in child custody cases and the accountability of family courts when using temporary restraining orders, protective orders, and other interventions. The cost effectiveness of guardians *ad litem* must be studied, as well as the use of mandatory mediation for all family court proceedings, and the presumption of joint custody. The task force is charged with making recommendations regarding the most effective manner to facilitate cooperative decision making by parents involved in custody and visitation proceedings.

A member of the task force may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations.

**Current Law:** An equity court has jurisdiction over the visitation of a child and custody or guardianship of a child except for a child who is under the jurisdiction of a juvenile court and who has been previously adjudicated to be a Child In Need of Assistance. (§ 1-201 Family Law)

Maryland courts resolve custody disputes 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 a 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).

**Background:** According to an empirical study of custody and divorce cases in Maryland completed in 2004 by The Women's Law Center, women request and receive sole custody of children more often than men do. The analysis of 1,022 divorce cases with children revealed that sole legal and physical custody to the mother occurred 38% of the time, the most frequent outcome. The next most frequent outcome was joint legal custody with physical custody to the mother in 28% of cases. In 13% of cases, the outcome was joint legal and physical custody and in 7% of the cases, sole legal and physical custody went to the father. Joint legal custody with physical custody to the father also occurred in 7% of the cases.

Custody outcomes indicate, however, that parents are sharing some form of decision making in nearly half the cases with children. Also, custody outcomes are more frequently resolved through agreements of the parties than through judicial intervention. When custody issues are resolved through judicial intervention, parties return to court at least twice as often as when they agree on the outcome.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), The Women's Law Center, Department of Legislative Services

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