

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 1067  
Judiciary

(Delegate McKee)

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**Family Law - Court-Ordered Visitation - Preference of an Older Child**

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This bill authorizes a court, when considering visitation issues in any custody or visitation proceeding, to consider making or modifying a visitation order to accommodate the firm and reasonable preferences of a child who is at least 14 years old. The court may also consider the firm and reasonable preferences of a child who is under the age of 14, if the child has sufficient maturity and is able to intelligently express a voluntary preference for a visitation schedule. The court may consider school and extracurricular activities when making or modifying a visitation order.

The bill has prospective application and applies only to cases filed on or after the bill's October 1, 2006 effective date.

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**Fiscal Summary**

**State Effect:** None. The bill's provisions could be implemented with existing resources.

**Local Effect:** None. The bill's provisions could be implemented with existing resources.

**Small Business Effect:** None.

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**Analysis**

**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. An

equity court may direct who has custody or guardianship of a child whether *pendente lite* or permanently. The court may also decide who has visitation rights to a child and who is responsible for the support of the child, whether *pendente lite* or permanently. An equity court may set aside or modify its decree or order concerning the child or issue an injunction to protect a party to the action from physical harm or harassment.

A child age 16 or older who is subject to a custody order or decree may file a petition to change custody. A child filing such a petition may proceed in his/her own name and need not proceed by guardian or “next friend” (an adult appointed by or admitted to a court to appear on behalf of a minor, but who is not a party to the action involving the minor). A court must hold a hearing to consider a petition to change custody and may amend the custody order or decree and place the child in the custody of the parent designated by the child.

Maryland courts resolve custody and visitation 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).

The court’s discretion to determine custody or visitation is limited as provided by law if there is an allegation or evidence of abuse or neglect. If the court has reasonable grounds to believe that a child has been abused or neglected by a party in a custody proceeding, the court must determine whether the 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 further likelihood of child abuse or neglect by the party, the court must 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.

**Background:** California, Connecticut, and Oklahoma are among the states that have enacted statutes authorizing courts, in custody proceedings, to consider the expressed preferences of mature children for custody with one parent over another parent.

**State and Local Fiscal Effect:** This bill adds another factor for the court to consider when custody decisions are made, but is not expected to materially affect the operations of the Judiciary. The bill would not alter case management standards and family services provided by the circuit courts and the Family Services Administration in the Administrative Office of the Courts.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 28, 2006  
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