

# HOUSE BILL 1147

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By: **Delegates Dumais, McComas, Doory, Eckardt, Elmore, Feldman, Haddaway, Jones, Kelly, Lee, Myers, Smigiel, Valderrama, Vallario, and Waldstreicher**

Introduced and read first time: February 7, 2008

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Child Custody Determinations**

3 FOR the purpose of specifying the procedures for court determinations of legal and  
4 physical custody of minor children; requiring the court, in any proceeding  
5 between parents in which the custody of a child is raised as an issue, to make a  
6 determination as to legal and physical custody of the child; authorizing the  
7 court to award certain types of legal or physical custody; requiring the court, in  
8 making a certain custody determination, to give primary consideration to the  
9 best interest of the child; requiring the court, in determining the best interest of  
10 the child, to consider certain factors; prohibiting the court from considering  
11 certain factors; requiring the court to articulate certain factors and findings on  
12 the record under certain circumstances; authorizing the court to modify a  
13 custody order or agreement under certain circumstances; establishing that the  
14 relocation of a parent constitutes a material change of circumstance for certain  
15 purposes; specifying that this Act may not be considered to be a material change  
16 of circumstance for purposes of modifying a certain child custody order; making  
17 certain conforming changes to certain provisions relating to custody and  
18 visitation; defining certain terms; and generally relating to child custody.

19 BY repealing and reenacting, with amendments,  
20 Article – Family Law  
21 Section 9–101, 9–101.1, and 9–101.2  
22 Annotated Code of Maryland  
23 (2006 Replacement Volume and 2007 Supplement)

24 BY adding to  
25 Article – Family Law  
26 Section 9–501 through 9–505 to be under the new subtitle “Subtitle 5. Child  
27 Custody Determinations”

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2006 Replacement Volume and 2007 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article – Family Law**

6 9–101.

7 (a) In any **LEGAL OR PHYSICAL** custody or visitation proceeding, if the court  
8 has reasonable grounds to believe that a child has been abused or neglected by a party  
9 to the proceeding, the court shall determine whether abuse or neglect is likely to occur  
10 if **LEGAL OR PHYSICAL** custody or visitation rights are granted to the party.

11 (b) Unless the court specifically finds that there is no likelihood of further  
12 child abuse or neglect by the party, the court shall deny **LEGAL OR PHYSICAL** custody  
13 or visitation rights to that party, except that the court may approve a supervised  
14 **PHYSICAL CUSTODY OR** visitation arrangement that assures the safety and the  
15 physiological, psychological, and emotional well-being of the child.

16 9–101.1.

17 (a) In this section, “abuse” has the meaning stated in § 4–501 of this article.

18 (b) In a **LEGAL OR PHYSICAL** custody or visitation proceeding, the court  
19 shall consider, when deciding **LEGAL OR PHYSICAL** custody or visitation issues,  
20 evidence of abuse by a party against:

21 (1) the other parent of the party’s child;

22 (2) the party’s spouse; or

23 (3) any child residing within the party’s household, including a child  
24 other than the child who is the subject of the **LEGAL OR PHYSICAL** custody or  
25 visitation proceeding.

26 (c) If the court finds that a party has committed abuse against the other  
27 parent of the party’s child, the party’s spouse, or any child residing within the party’s  
28 household, the court shall make arrangements for **LEGAL OR PHYSICAL** custody or  
29 visitation that best protect:

30 (1) the child who is the subject of the proceeding; and

31 (2) the victim of the abuse.

32 9–101.2.

1 (a) Except as provided in subsection (b) of this section, unless good cause for  
2 the award of **LEGAL OR PHYSICAL** custody or visitation is shown by clear and  
3 convincing evidence, a court may not award **LEGAL OR PHYSICAL** custody of a child  
4 or visitation with a child:

5 (1) to a parent who has been found by a court of this State to be guilty  
6 of first degree or second degree murder of the other parent of the child, another child  
7 of the parent, or any family member residing in the household of either parent of the  
8 child; or

9 (2) to a parent who has been found by a court of any state or of the  
10 United States to be guilty of a crime that, if committed in this State, would be first  
11 degree murder or second degree murder of the other parent of the child, another child  
12 of the parent, or any family member residing in the household of either parent of the  
13 child.

14 (b) If it is in the best interest of the child, the court may approve a  
15 supervised **PHYSICAL CUSTODY OR** visitation arrangement that assures the safety  
16 and the physiological, psychological, and emotional well-being of the child.

#### 17 **SUBTITLE 5. CHILD CUSTODY DETERMINATIONS.**

#### 18 **9-501.**

19 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
20 **INDICATED.**

21 (B) **“LEGAL CUSTODY” MEANS THE RIGHT AND OBLIGATION TO MAKE**  
22 **LONG-RANGE DECISIONS INVOLVING EDUCATION, RELIGIOUS TRAINING,**  
23 **DISCIPLINE, MEDICAL CARE, AND OTHER MATTERS OF MAJOR SIGNIFICANCE**  
24 **CONCERNING THE CHILD’S LIFE AND WELFARE.**

25 (C) **“PHYSICAL CUSTODY” MEANS:**

26 (1) **THE TIME THE CHILD IS IN A PARENT’S CARE ACCORDING TO**  
27 **AN AGREED ON OR COURT-ORDERED SCHEDULE; AND**

28 (2) **THE RIGHT AND OBLIGATION OF A PARENT TO PROVIDE A**  
29 **HOME FOR THE CHILD AND TO MAKE THE DAY-TO-DAY DECISIONS REQUIRED**  
30 **DURING THE TIME THE CHILD IS WITH THAT PARENT.**

#### 31 **9-502.**

1           (A) THIS SUBTITLE GOVERNS COURT DETERMINATIONS OF LEGAL AND  
2 PHYSICAL CUSTODY OF MINOR CHILDREN.

3           (B) THIS SUBTITLE SHALL BE CONSTRUED TO FOSTER THE RIGHT OF  
4 EACH CHILD IN THE STATE TO THE BENEFITS OF THE NATURAL GUARDIANSHIP  
5 OF BOTH OF THE CHILD'S PARENTS CONSISTENT WITH THE PROVISIONS OF  
6 § 5-203 OF THIS ARTICLE AND THE BEST INTEREST OF EACH CHILD.

7           (C) IN THIS SUBTITLE, AN UNDEFINED WORD OR PHRASE THAT  
8 DESCRIBES A FACTOR TO BE CONSIDERED IN THE DETERMINATION OF THE BEST  
9 INTEREST OF THE CHILD RETAINS ITS JUDICIALLY DETERMINED MEANING,  
10 EXCEPT TO THE EXTENT THAT IT IS EXPRESSLY OR IMPLIEDLY CHANGED IN  
11 THIS SUBTITLE.

12 **9-503.**

13           THE PURPOSES OF THIS SUBTITLE ARE TO MEET THE BEST INTERESTS OF  
14 CHILDREN AND TO:

15                   (1) PROMOTE STABILITY FOR CHILDREN;

16                   (2) PROVIDE CONTINUITY OF POSITIVE PARENT-CHILD  
17 RELATIONSHIPS;

18                   (3) PROVIDE CHILDREN SECURITY AND PROTECTION FROM  
19 EXPOSURE TO CONFLICT AND VIOLENCE;

20                   (4) PROVIDE FOR EXPEDITIOUS AND PREDICTABLE DECISION  
21 MAKING BY COURTS; AND

22                   (5) PREVENT THE UNNECESSARY SEPARATION OF SIBLINGS.

23 **9-504.**

24           (A) IN ANY PROCEEDING BETWEEN PARENTS IN WHICH THE CUSTODY  
25 OF A CHILD IS RAISED AS AN ISSUE, THE COURT SHALL MAKE A DETERMINATION  
26 AS TO LEGAL AND PHYSICAL CUSTODY OF THE CHILD IN ACCORDANCE WITH THE  
27 PROVISIONS OF THIS SUBTITLE.

28           (B) SUBJECT TO THE PROVISIONS OF § 9-505 OF THIS SUBTITLE, THE  
29 COURT MAY AWARD:

30                   (1) LEGAL CUSTODY AS FOLLOWS:

- 1 (I) SOLE LEGAL CUSTODY TO ONE OF THE PARENTS;
- 2 (II) JOINT LEGAL CUSTODY TO BOTH OF THE PARENTS; OR
- 3 (III) JOINT LEGAL CUSTODY TO BOTH OF THE PARENTS WITH  
4 ONE OF THE PARENTS RESPONSIBLE FOR MAKING THE FINAL DECISION IF,  
5 AFTER THOROUGH DISCUSSION BETWEEN THE PARENTS, THEY CANNOT REACH  
6 A SHARED DECISION; AND

7 (2) PHYSICAL CUSTODY TO ONE OR BOTH OF THE PARENTS IN  
8 ANY MANNER THAT THE COURT DETERMINES IS APPROPRIATE.

9 **9-505.**

10 (A) THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE  
11 PROVISIONS OF §§ 9-101, 9-101.1, AND 9-101.2 OF THIS TITLE.

12 (B) IN MAKING A DETERMINATION OF LEGAL AND PHYSICAL CUSTODY  
13 UNDER THIS SUBTITLE, THE COURT SHALL GIVE PRIMARY CONSIDERATION TO  
14 THE BEST INTEREST OF THE CHILD.

15 (C) IN DETERMINING THE BEST INTEREST OF THE CHILD, THE COURT  
16 SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING:

17 (1) THE FITNESS OF THE PARENTS, INCLUDING THE  
18 PSYCHOLOGICAL AND PHYSICAL CAPABILITIES OF EACH PARENT AND ANY  
19 CONDUCT AND CHARACTERISTICS OF A PARENT THAT AFFECT THAT PARENT'S  
20 ABILITY TO CARE FOR THE CHILD OR THAT MAY HAVE AN ADVERSE EFFECT ON  
21 THE CHILD;

22 (2) THE REQUESTS OF EACH PARENT AND THE SINCERITY OF THE  
23 REQUESTS;

24 (3) THE WILLINGNESS OF THE PARENTS TO SHARE CUSTODY;

25 (4) ANY AGREEMENTS BETWEEN THE PARENTS;

26 (5) EACH PARENT'S ABILITY TO MAINTAIN THE CHILD'S  
27 RELATIONSHIPS WITH THE OTHER PARENT, SIBLINGS, RELATIVES, AND ANY  
28 OTHER PERSON WHO MAY PSYCHOLOGICALLY AFFECT THE CHILD'S BEST  
29 INTEREST;

30 (6) THE CHILD'S PREFERENCE, IF THE CHILD IS OF AN AGE AND  
31 INTELLIGENCE TO FORM A RATIONAL JUDGMENT;

1           **(7) THE CAPACITY OF THE PARENTS TO COMMUNICATE AND TO**  
2 **REACH SHARED DECISIONS AFFECTING THE CHILD'S WELFARE;**

3           **(8) THE GEOGRAPHIC PROXIMITY OF THE PARENTS' RESIDENCES**  
4 **AND OPPORTUNITIES FOR TIME WITH EACH PARENT;**

5           **(9) THE LENGTH OF AND THE REASONS FOR SEPARATION FROM A**  
6 **NATURAL PARENT;**

7           **(10) ANY PRIOR VOLUNTARY ABANDONMENT OR SURRENDER OF**  
8 **THE CHILD BY A PARENT;**

9           **(11) THE RELATIONSHIP ESTABLISHED BETWEEN THE CHILD AND**  
10 **EACH PARENT;**

11           **(12) THE ABILITY OF EACH PARENT TO MAINTAIN A STABLE AND**  
12 **APPROPRIATE HOME FOR THE CHILD;**

13           **(13) THE DEMANDS OF PARENTAL EMPLOYMENT AND**  
14 **OPPORTUNITIES FOR TIME WITH THE CHILD;**

15           **(14) THE POTENTIAL DISRUPTION OF THE CHILD'S SOCIAL AND**  
16 **SCHOOL LIFE;**

17           **(15) ANY IMPACT ON STATE OR FEDERAL ASSISTANCE;**

18           **(16) THE BENEFIT TO THE PARENTS IF THE BENEFIT WILL LIKELY**  
19 **RESULT IN A BENEFIT TO THE CHILD;**

20           **(17) THE AGE, SEX, AND HEALTH OF THE CHILD;**

21           **(18) THE AGE AND NUMBER OF CHILDREN EACH PARENT HAS IN**  
22 **THE HOUSEHOLD; AND**

23           **(19) ANY OTHER CONSIDERATION THE COURT DETERMINES IS**  
24 **RELEVANT TO THE BEST INTEREST OF THE CHILD.**

25           **(D) IN MAKING A DETERMINATION OF LEGAL AND PHYSICAL CUSTODY**  
26 **UNDER THIS SECTION, THE COURT MAY NOT CONSIDER:**

27           **(1) THE RACE OR ETHNICITY OF THE CHILD, A PARENT, OR ANY**  
28 **OTHER MEMBER OF THE HOUSEHOLD;**

1           (2)    **THE SEX OF A PARENT;**

2           (3)    **THE RELIGIOUS PRACTICES OF A PARENT OR THE CHILD,**  
3 **EXCEPT ON A SHOWING OF ACTUAL OR PROBABLE HARM TO THE PHYSICAL OR**  
4 **EMOTIONAL WELFARE OF THE CHILD;**

5           (4)    **THE EXTRAMARITAL SEXUAL CONDUCT OF A PARENT, EXCEPT**  
6 **ON A SHOWING OF ACTUAL OR PROBABLE HARM TO THE PHYSICAL OR**  
7 **EMOTIONAL WELFARE OF THE CHILD;**

8           (5)    **THE SEXUAL ORIENTATION OF A PARENT, EXCEPT ON A**  
9 **SHOWING OF ACTUAL OR PROBABLE HARM TO THE PHYSICAL OR EMOTIONAL**  
10 **WELFARE OF THE CHILD;**

11          (6)    **THE PARENTS' RELATIVE EARNING CAPACITIES OR FINANCIAL**  
12 **CIRCUMSTANCES, EXCEPT THAT THE COURT MAY CONSIDER:**

13                (I)    **THE DEGREE TO WHICH THE COMBINED FINANCIAL**  
14 **RESOURCES OF THE PARENTS SET PRACTICAL LIMITS ON THE CUSTODIAL**  
15 **ARRANGEMENTS; AND**

16                (II) **A PARENT'S VOLUNTARY IMPOVERISHMENT ON A**  
17 **SHOWING OF ACTUAL OR PROBABLE HARM TO THE PHYSICAL OR EMOTIONAL**  
18 **WELFARE OF THE CHILD; AND**

19          (7)    **THE COMPLIANCE OF A PARENT WITH COURT ORDERS**  
20 **REGARDING ECONOMIC SUPPORT, EXCEPT ON EVIDENCE THAT THE**  
21 **NONPAYMENT AFFECTS THE WELFARE OF THE CHILD.**

22          (E)    (1)   **IN MAKING A DETERMINATION OF LEGAL AND PHYSICAL**  
23 **CUSTODY UNDER THIS SECTION, THE COURT SHALL ARTICULATE ON THE**  
24 **RECORD THE FACTORS IN SUBSECTION (C) OF THIS SECTION CONSIDERED IN**  
25 **THE DETERMINATION.**

26          (2)    **IF THE COURT FINDS THAT JOINT LEGAL CUSTODY IS**  
27 **APPROPRIATE WHERE THERE IS NO EVIDENCE OF WILLINGNESS AND ABILITY OF**  
28 **THE PARENTS TO COMMUNICATE AND TO REACH SHARED DECISIONS**  
29 **AFFECTING THE CHILD'S WELFARE, THE COURT SHALL ARTICULATE ON THE**  
30 **RECORD THE FINDINGS THAT SUPPORT THAT CONCLUSION.**

31          (F)    (1)   **THE COURT MAY MODIFY A CUSTODY ORDER OR AGREEMENT**  
32 **IF:**

1                   **(I) THE PARTY SEEKING A CHANGE IN THE CUSTODY ORDER**  
2 **OR AGREEMENT PROVES THAT THERE HAS BEEN A MATERIAL CHANGE OF**  
3 **CIRCUMSTANCE THAT AFFECTS THE WELFARE OF THE CHILD; AND**

4                   **(II) THE COURT FINDS THAT MODIFICATION OF THE**  
5 **CUSTODY ORDER OR AGREEMENT IS IN THE BEST INTEREST OF THE CHILD.**

6                   **(2) THE RELOCATION OF A PARENT CONSTITUTES A MATERIAL**  
7 **CHANGE OF CIRCUMSTANCE FOR PURPOSES OF PARAGRAPH (1)(I) OF THIS**  
8 **SUBSECTION.**

9                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be  
10 considered to be a material change of circumstance for purposes of modifying a child  
11 custody order issued before the effective date of this Act.

12                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2008.