

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 609

(Senator Simonaire)

Judicial Proceedings

Family Law - Child Custody and Visitation - Change of Child's Permanent Residence

This bill repeals existing provisions for notification prior to relocation of a child who is the subject of a custody or visitation order and establishes that a party to a custody or visitation order may not change the permanent residence of the child to a location that is more than 100 miles from the child's permanent residence unless specified conditions are met.

Fiscal Summary

State Effect: Minimal general fund expenditure increase from additional hearings that may be required by the bill.

Local Effect: Minimal expenditure increase to provide additional hearings that may be required by the bill.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that a child who is the subject of a joint custody order has a permanent residence with each party to the order.

A party must provide written notice of at least 45 days to the court and the other party of the intent to change the location of the child's permanent residence by more than 100

miles. Before approving a permanent residence change, the court must consider six specified factors in the bill and the best interests of the child.

In any custody or visitation proceeding, the court must include in each order determining or modifying custody or visitation a provision stating each party's agreement as to how a change in either of the child's permanent residences will be handled. If the child's permanent residence change is accomplished according to the agreement stated in the order, then the court does not have to engage in the fact finding required by the bill. If the parties do not agree about how to handle a change in either of the child's permanent residences, then the court must include a statement in the order prohibiting the parties from changing either permanent residence of the child except in compliance with the provisions of this bill.

The bill's provisions do not apply if, at the time of the custody order's issuance, the parties' residences were more than 100 miles apart or if the residence change results in the child's two residences being closer to each other than before the change.

If the party seeking to change the child's residence needs a safe location from the threat of domestic violence, the party may move to that safe location with the child until the court has made its determination as required by the bill. On a showing that the notice required by the bill would expose the child or either party to domestic abuse, or for any other good cause, the court must waive the notice required by the bill.

Current Law: 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. On a showing that notice would expose either party to domestic abuse or for any other good cause, the court must waive the notice requirement. If either party is required to relocate in less than the 45 day period specified, the court may consider, as a defense to a court action brought for violation of the notice requirement, that relocation was necessary due to financial or other extenuating circumstances and the required notice was given within a reasonable time after learning of the necessity to relocate. Any violation of the notice requirement may be considered by a court when determining the merits of a subsequent custody or visitation proceeding.

Background: 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 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).

If there is a dispute as to visitation or custody, the court must also determine whether mediation of the dispute is appropriate and would be beneficial to the parties and any minor children and if there is a properly qualified mediator available to mediate the dispute. The court must not order mediation if there is a good faith representation of genuine physical or sexual abuse of a party or a child subject to the proceeding.

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.

In a custody or visitation proceeding, the court must consider evidence of abuse against the other parent of a party's child, the party's spouse, or any child residing within the party's household, including the child who is the subject of the custody or visitation proceeding. If the court finds that a party has committed abuse against any of the

aforementioned people, the court must make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of abuse.

Custody in the Real World: 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.

State and Local Fiscal Effect: The number of review and modification hearings could potentially increase due to the bill's provisions. The increase cannot be reliably estimated, but is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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