

SENATE BILL 740

D4
HB 1147/08 – JUD

9lr2428
CF 9lr0404

By: **Senator Raskin**

Introduced and read first time: February 6, 2009

Assigned to: Judicial Proceedings

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 forms of legal and physical custody; requiring the court,
8 in 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; requiring the court, in making a certain
11 custody determination, to articulate its reasons on the record, including the
12 factors considered in the determination; prohibiting the court from denying
13 custody to a parent solely on the basis of a disability of the parent except under
14 certain circumstances; authorizing the court to modify a custody order or
15 agreement under certain circumstances; specifying that this Act may not be
16 considered to be a material change of circumstances for purposes of modifying a
17 certain child custody order; defining certain terms; and generally relating to
18 child custody.

19 BY adding to

20 Article – Family Law

21 Section 9–501 through 9–506 to be under the new subtitle “Subtitle 5. Child
22 Custody Determinations”

23 Annotated Code of Maryland

24 (2006 Replacement Volume and 2008 Supplement)

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

27 **Article – Family Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SUBTITLE 5. CHILD CUSTODY DETERMINATIONS.

9-501.

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

(B) (1) “DISABILITY” MEANS A PHYSICAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE ACTIVITIES OF AN INDIVIDUAL.

(2) “DISABILITY” DOES NOT INCLUDE ILLEGAL USE OF OR ADDICTION TO:

(I) A CONTROLLED DANGEROUS SUBSTANCE AS DEFINED IN § 5-101 OF THE CRIMINAL LAW ARTICLE; OR

(II) A CONTROLLED SUBSTANCE AS DEFINED IN § 102 OF THE FEDERAL CONTROLLED SUBSTANCES ACT.

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

(D) “PHYSICAL CUSTODY” MEANS:

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

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

9-502.

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

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

(C) IN THIS SUBTITLE AN UNDEFINED WORD OR PHRASE THAT DESCRIBES A FACTOR TO BE CONSIDERED IN THE DETERMINATION OF THE BEST INTEREST OF THE CHILD RETAINS ITS JUDICIALLY DETERMINED MEANING.

9-503.

THE PURPOSES OF THIS SUBTITLE ARE TO SERVE THE BEST INTERESTS OF CHILDREN AND TO:

(1) PROMOTE STABILITY FOR CHILDREN;

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

(3) SUBJECT TO THE PROVISIONS OF §§ 9-101, 9-101.1, AND 9-101.2 OF THIS TITLE, PROMOTE FREQUENT AND CONTINUING CONTACT BETWEEN A CHILD AND PARENTS WHO ARE SEPARATED OR DIVORCED OR WERE NEVER MARRIED;

(4) PROVIDE CHILDREN WITH PHYSICAL AND EMOTIONAL SECURITY AND PROTECTION FROM EXPOSURE TO CONFLICT AND VIOLENCE;

(5) PROVIDE FOR AN EXPEDITIOUS, THOUGHTFUL, AND CONSISTENT PROCESS FOR DECISION MAKING BY COURTS; AND

(6) PREVENT THE UNNECESSARY SEPARATION OF SIBLINGS.

9-504.

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

(B) SUBJECT TO THE PROVISIONS OF § 9-505 OF THIS SUBTITLE, THE COURT MAY AWARD THE FOLLOWING FORMS OF CUSTODY, NOT LISTED IN ORDER OF PRIORITY:

(1) LEGAL CUSTODY AS FOLLOWS:

(I) JOINT LEGAL CUSTODY TO BOTH OF THE PARENTS;

(II) JOINT LEGAL CUSTODY TO BOTH OF THE PARENTS WITH ONE OF THE PARENTS RESPONSIBLE FOR MAKING THE FINAL DECISION IF,

1 AFTER THOROUGH DISCUSSION BETWEEN THE PARENTS, THEY CANNOT REACH
2 A SHARED DECISION; OR

3 (III) SOLE LEGAL CUSTODY TO ONE OF THE PARENTS; AND

4 (2) PHYSICAL CUSTODY TO ONE OR BOTH OF THE PARENTS IN ANY
5 MANNER THAT THE COURT DETERMINES IS IN THE BEST INTEREST OF THE
6 CHILD.

7 **9-505.**

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

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

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

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

20 (2) THE REQUESTS OF EACH PARENT AND THE SINCERITY OF
21 THEIR REQUESTS;

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

23 (4) ANY AGREEMENTS BETWEEN THE PARENTS;

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

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

30 (7) THE CAPACITY OF THE PARENTS TO COMMUNICATE AND TO
31 REACH SHARED DECISIONS AFFECTING THE CHILD'S WELFARE;

1 (8) THE GEOGRAPHIC PROXIMITY OF THE PARENTS' RESIDENCES
2 AND OPPORTUNITIES FOR TIME WITH EACH PARENT;

3 (9) THE LENGTH OF AND THE REASONS FOR THE CHILD'S
4 SEPARATION FROM A PARENT;

5 (10) ANY PRIOR VOLUNTARY ABANDONMENT OR SURRENDER OF
6 THE CHILD BY A PARENT;

7 (11) THE RELATIONSHIP ESTABLISHED BETWEEN THE CHILD AND
8 EACH PARENT;

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

11 (13) THE DEMANDS OF PARENTAL EMPLOYMENT AND
12 OPPORTUNITIES FOR TIME WITH THE CHILD;

13 (14) THE POTENTIAL DISRUPTION OF THE CHILD'S SOCIAL AND
14 SCHOOL LIFE;

15 (15) ANY IMPACT ON GOVERNMENT ASSISTANCE OR BENEFITS;

16 (16) THE AGE, GENDER, AND HEALTH OF THE CHILD;

17 (17) THE AGE AND NUMBER OF CHILDREN EACH PARENT HAS IN
18 THE HOUSEHOLD; AND

19 (18) ANY OTHER CONSIDERATION THE COURT DETERMINES IS
20 RELEVANT TO THE BEST INTEREST OF THE CHILD.

21 (D) IN MAKING A DETERMINATION OF LEGAL AND PHYSICAL CUSTODY
22 UNDER THIS SECTION, THE COURT SHALL ARTICULATE ITS REASONS ON THE
23 RECORD, INCLUDING THE FACTORS CONSIDERED IN THE DETERMINATION.

24 (E) THE COURT MAY NOT DENY CUSTODY TO A PARENT SOLELY ON THE
25 BASIS OF A DISABILITY OF THE PARENT, UNLESS THE COURT SPECIFICALLY
26 FINDS THAT THE DISABILITY CAUSES A CONDITION THAT IS DETRIMENTAL TO
27 THE BEST INTEREST OF THE CHILD.

28 **9-106.**

29 THE COURT MAY MODIFY A CUSTODY ORDER OR AGREEMENT IF:

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

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

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

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2009.