

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 26
Judiciary

(Delegate Howard)

Family Law - Child Custody Orders

This bill requires a court in a custody proceeding to consider existing or potential discipline problems of the child when making a custody determination.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current 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 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.

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.

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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