

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 1047
Rules

(Senator Muse)

Family Law - Child Custody Determinations

This bill creates a rebuttable presumption in an initial child custody proceeding, whether *pendente lite* or permanent, involving the parents of a child, that an award of physical custody of the child for approximately equal periods of time for each parent and joint legal custody is in the best interest of the child.

Fiscal Summary

State Effect: None. The bill does not directly affect governmental operations or finances.

Local Effect: None. The bill does not directly affect circuit court operations or finances.

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).

The *Taylor* court stated that the factor regarding the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate. The court further stated that rarely, if ever, should joint legal custody be awarded without a record of mature conduct on the part of the parents that demonstrates an ability to effectively communicate with each other concerning the best interest of the child. In the absence of such a record, joint legal custody should only be awarded if it is possible to make a finding that there is a strong potential for such conduct in the future. The court noted that there is no benefit to conditioning the making of decisions affecting a child's welfare upon the mutual agreement of parties when there is evidence of an acrimonious relationship between the parties and a failure of rational communication.

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.

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.

State and Local Fiscal Effect: This bill requires judges to alter the manner in which they make custody decisions, but is not expected to substantially impact operations of the Judiciary. Parents who do not want a joint or approximately equal physical custody arrangement would be required to rebut the presumption established in the bill. This bill does 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.

Additional Information

Prior Introductions: HB 1327 of 2007 received a hearing in the House Judiciary Committee, but no further action was taken. HB 1217 of 2004 received a favorable with amendments report from the House Judiciary Committee but was recommitted. HB 1158 of 2003 was withdrawn.

Cross File: HB 925 (Delegate Carter, *et al.*) - Judiciary.

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

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