

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 1004 (Senator Muse)
Judicial Proceedings

Family Law - Children's Civil Rights - Equal Parenting Time

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 child custody disputes based on a determination of “what is in the child’s best interests.” 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 parents; (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. *Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

Traditionally, when one parent was granted “custody” of a minor child, the other parent would generally be awarded visitation rights. In 1984, the Court of Appeals first recognized and applied the concept of “joint custody.” See *Taylor v. Taylor*, 306 Md. 290 (1986). The *Taylor* Court explained that, within the meaning of “custody” are the concepts of “legal” and “physical” custody. Legal custody means the right and obligation to make long range decisions involving the education, religious training, discipline, medical care, and other matters of major significance concerning the child’s life and welfare. With joint legal custody, both parents have an equal voice in making those decisions and neither parent’s rights are superior to the other. Physical custody means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody. Joint physical custody is in reality, “shared” or “divided” custody, with the child in the physical custody of each parent for periods of time that may or may not be on a 50/50 basis. *Taylor* at 296-297.

In addition to the factors set forth in the *Sanders* decision, a court considering an award of joint custody must also examine 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. *Taylor* at 304-311. The *Taylor* Court emphasized that the single most important factor in the determination of whether an award of joint legal custody is appropriate is the capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare. *Taylor* at 305.

Background: Although the Maryland Judiciary does not keep statistics on custody outcomes, the Women’s Law Center conducted a comprehensive study of divorce and custody cases filed in Maryland in fiscal 2003. See *Families in Transition: A Follow-Up Study Exploring Family Law Issues in Maryland* (2006). The research sample included 1,268 cases that involved custody issues. Of the total number of cases in the sample, more than half (55%) resulted in some form of joint legal custody (joint legal with physical custody to mother, joint legal with physical custody to father, and joint legal and physical custody). The report concluded that the cases in which joint legal and/or

physical custody were imposed by judicial intervention resulted in more subsequent litigation than when the parties agreed to it. Specifically, when the court ordered joint legal and physical custody, or when it ordered joint legal custody and primary physical custody to the fathers, subsequent litigation rates were the highest at 19% and 27%, respectively.

According to the American Bar Association's 2013 *Family Law Quarterly*, nine states (Arizona, Florida, Idaho, Louisiana, Nevada, New Mexico, Tennessee, Texas, and Wisconsin) have a presumption that joint custody is in the best interest of the child. An additional five states (Alabama, California, Connecticut, Minnesota, and Mississippi) have a presumption that joint custody is in the best interest of the child only if the parents agree.

A review of statutes conducted by the Department of Legislative Services in 2011 also found that two states (Maine and Michigan) require courts to award joint custody if the parents agree to it. Sixteen states (Alabama, Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Iowa, Louisiana, Minnesota, Mississippi, Nevada, Oklahoma, Oregon, and Wisconsin) and the District of Columbia have rebuttable presumptions that joint custody is not in the best interest of the child if there have been allegations of domestic violence. Finally, two states (Texas and Washington) prohibit courts from awarding joint custody if there is a history of domestic violence.

State/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: SB 909 of 2011 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1132, received a hearing in the House Judiciary Committee, but no further action was taken. SB 1047 of 2010 was referred to the Senate Rules Committee but received no further action. Its cross file, HB 925, was heard in the House Judiciary Committee but received no further action. 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 received a hearing in the House Judiciary Committee but was subsequently withdrawn.

Cross File: HB 1440 (Delegate Carter) - Rules and Executive Nominations.

Information Source(s): Judiciary (Administrative Office of the Courts), American Bar Association, Women's Law Center of Maryland, Department of Legislative Services

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