

SENATE BILL 849

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By: **Senator West**

Introduced and read first time: February 7, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Child Custody – Legal Decision–Making and Parenting Time**

3 FOR the purpose of repealing references to the terms “child custody” and “visitation” in
4 certain instances and substituting the terms “legal decision–making” and “parenting
5 time” in certain instances; authorizing the court, in determining certain legal
6 decision–making authority and parenting time in certain child custody proceedings,
7 to consider certain factors; authorizing the court to award joint legal
8 decision–making to both parents or make other modifications to a custody or
9 visitation order under certain circumstances; prohibiting a parent from unilaterally
10 making certain decisions concerning a child without agreement of the other parent
11 or order of the court under certain circumstances; and generally relating to child
12 custody, visitation, legal decision–making, and parenting time.

13 BY repealing

14 Article – Family Law

15 Section 5–203(d) and 9–107

16 Annotated Code of Maryland

17 (2019 Replacement Volume and 2021 Supplement)

18 BY adding to

19 Article – Family Law

20 Section 9–101 and 9–103 to be under the amended subtitle “Subtitle 1. Definitions;

21 General Provisions” and the amended title “Title 9. Custodial Arrangements

22 for Children”; and 9–201 through 9–204 to be under the new subtitle “Subtitle

23 2. Legal Decision–Making and Parental Responsibility – Judicial

24 Determinations”

25 Annotated Code of Maryland

26 (2019 Replacement Volume and 2021 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article – Family Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 9–101, 9–101.1, 9–101.2, 9–103, 9–104, 9–105, 9–106, and 9–108
2 Annotated Code of Maryland
3 (2019 Replacement Volume and 2021 Supplement)

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

6 **Article – Family Law**

7 5–203.

8 [(d) (1) If the parents live apart, a court may award custody of a minor child to
9 either parent or joint custody to both parents.

10 (2) Neither parent is presumed to have any right to custody that is superior
11 to the right of the other parent.]

12 Title 9. [Child Custody and Visitation] **CUSTODIAL ARRANGEMENTS FOR CHILDREN.**

13 Subtitle 1. [In General] **DEFINITIONS; GENERAL PROVISIONS.**

14 **9–101.**

15 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (B) “CHILD” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

18 (C) (1) “LEGAL DECISION–MAKING” MEANS THE RIGHT AND OBLIGATION
19 TO MAKE MAJOR LONG–TERM DECISIONS INVOLVING MEDICAL CARE, MENTAL
20 HEALTH, EDUCATION, RELIGIOUS TRAINING, EXTRACURRICULAR ACTIVITIES, AND
21 OTHER MATTERS OF MAJOR SIGNIFICANCE CONCERNING A CHILD’S LIFE AND
22 WELFARE.

23 (2) “LEGAL DECISION–MAKING” IS ALSO KNOWN AS LEGAL CUSTODY.

24 (D) “PARENT” MEANS A BIOLOGICAL PARENT, AN ADOPTIVE PARENT, OR AN
25 INDIVIDUAL A COURT HAS DEEMED TO BE A DE FACTO PARENT.

26 (E) (1) “PARENTING TIME” MEANS:

27 (I) THE TIME A CHILD IS IN A PARENT’S CARE ACCORDING TO
28 AN AGREEMENT OR A COURT–ORDERED SCHEDULE; AND

29 (II) THE RIGHT AND OBLIGATION OF A PARENT TO PROVIDE A

1 HOME FOR THE CHILD, ADDRESS THE CHILD'S NEEDS, AND MAKE THE DAY-TO-DAY
2 DECISIONS REQUIRED DURING THE TIME THE CHILD IS WITH THAT PARENT.

3 (2) "PARENTING TIME" IS ALSO KNOWN AS PHYSICAL CUSTODY,
4 VISITATION, OR ACCESS.

5 9-103.

6 (A) A COURT MAY AWARD LEGAL DECISION-MAKING OR PARENTING TIME
7 TO ONE PARENT OR JOINTLY TO THE PARENTS.

8 (B) NO PARENT IS PRESUMED TO HAVE ANY RIGHT TO LEGAL
9 DECISION-MAKING OR PARENTING TIME THAT IS SUPERIOR TO THE RIGHT OF
10 ANOTHER PARENT.

11 [9-101.] 9-104.

12 (a) In any [custody or visitation] LEGAL DECISION-MAKING OR
13 PARENTING-TIME proceeding, if the court has reasonable grounds to believe that a child
14 has been abused or neglected by a party to the proceeding, the court shall determine
15 whether abuse or neglect is likely to occur if [custody or visitation] LEGAL
16 DECISION-MAKING OR PARENTING-TIME rights are granted to the party.

17 (b) Unless the court specifically finds that there is no likelihood of further child
18 abuse or neglect by the party, the court shall deny [custody or visitation] LEGAL
19 DECISION-MAKING OR PARENTING-TIME rights to that party, except that the court may
20 approve a supervised [visitation] PARENTING-TIME arrangement that assures the safety
21 and the physiological, psychological, and emotional well-being of the child.

22 [9-101.1.] 9-105.

23 (a) In this section, "abuse" has the meaning stated in § 4-501 of this article.

24 (b) In a [custody or visitation] LEGAL DECISION-MAKING OR
25 PARENTING-TIME proceeding, the court shall consider[, when deciding custody or
26 visitation issues,] evidence of abuse by a party against:

27 (1) the other parent of the party's child;

28 (2) the party's spouse; or

29 (3) any child residing within the party's household, including a child other
30 than the child who is the subject of the [custody or visitation] proceeding.

31 (c) If the court finds that a party has committed abuse against the other parent

1 of the party's child, the party's spouse, or any child residing within the party's household,
2 the court shall make arrangements for [custody or visitation] **LEGAL DECISION-MAKING**
3 **OR PARENTING TIME** that best protect:

4 (1) the child who is the subject of the proceeding; and

5 (2) the victim of the abuse.

6 **[9-101.2.] 9-106.**

7 (a) Except as provided in subsection (b) of this section, unless good cause for the
8 award of [custody or visitation] **LEGAL DECISION-MAKING OR PARENTING TIME** is
9 shown by clear and convincing evidence, a court may not award [custody of a child or
10 visitation with a child] **LEGAL DECISION-MAKING OR PARENTING TIME**:

11 (1) to a parent who has been found by a court of this State to be guilty of
12 first degree or second degree murder of the other parent of the child, another child of the
13 parent, or any family member residing in the household of either parent of the child; or

14 (2) to a parent who has been found by a court of any state or of the United
15 States to be guilty of a crime that, if committed in this State, would be first degree murder
16 or second degree murder of the other parent of the child, another child of the parent, or any
17 family member residing in the household of either parent of the child.

18 (b) If it is in the best interest of the child, the court may approve a supervised
19 [visitation] **PARENTING-TIME** arrangement that assures the safety and the physiological,
20 psychological, and emotional well-being of the child.

21 **[9-103.] 9-107.**

22 (a) A child who is 16 years old or older and who is subject to a custody order or
23 decree **OR A LEGAL DECISION-MAKING OR PARENTING-TIME ORDER OR DECREE** may
24 file a petition to change custody **OR LEGAL DECISION-MAKING OR PARENTING TIME**.

25 (b) A petitioner under this section may file the proceeding in the petitioner's own
26 name and need not proceed by guardian or next friend.

27 (c) Notwithstanding any other provision of this article, if a petitioner under this
28 section petitions a court to amend a custody order or decree **OR A LEGAL**
29 **DECISION-MAKING OR PARENTING-TIME ORDER OR DECREE**, the court:

30 (1) shall hold a hearing; and

31 (2) may amend the order or decree and [place the child in the custody of]
32 **GRANT LEGAL DECISION-MAKING OR PARENTING TIME TO** the parent designated by
33 the child.

1 ~~[9-104.] 9-108.~~

2 Unless otherwise ordered by a court, access to medical, dental, and educational
3 records concerning the child may not be denied to a parent [because the parent does not
4 have physical custody of the child].

5 ~~[9-105.] 9-109.~~

6 [In any custody or visitation proceeding, if] **IF** the court determines that a party to
7 a custody or visitation order **OR LEGAL DECISION-MAKING OR PARENTING-TIME**
8 **ORDER** has unjustifiably denied or interfered with [visitation] **THE RIGHTS** granted by [a
9 custody or visitation] **THE** order, the court may, in addition to any other remedy available
10 to the court and in a manner consistent with the best interests of the child, take any or all
11 of the following actions:

12 (1) order that the [visitation] **PARENTING TIME** be rescheduled;

13 (2) modify the custody or visitation **OR LEGAL DECISION-MAKING OR**
14 **PARENTING-TIME** order to require additional terms or conditions designed to ensure
15 future compliance with the order; or

16 (3) assess costs or counsel fees against the party who has unjustifiably
17 denied or interfered with [visitation] **PARENTING-TIME** rights.

18 ~~[9-106.] 9-110.~~

19 (a) (1) Except as provided in subsection (b) of this section, in any [custody or
20 visitation] **LEGAL DECISION-MAKING OR PARENTING-TIME** proceeding the court [may]
21 **SHALL** include as a condition of a [custody or visitation] **LEGAL DECISION-MAKING OR**
22 **PARENTING-TIME** order a requirement that either party provide advance written notice
23 of at least 90 days to the court, the other party, or both, of the intent to relocate the
24 permanent residence of the party or the child either within or outside the State.

25 (2) The court may prescribe the form and content of the notice requirement.

26 (3) If the court orders that notice be given to the other party, a mailing of
27 the notice by certified mail, return receipt requested, to the last known address of the other
28 party shall be deemed sufficient to comply with the notice requirement.

29 (4) If either party files a petition regarding a proposed relocation within 20
30 days of the written notice of the relocation required by paragraph (1) of this subsection, the
31 court shall set a hearing on the petition on an expedited basis.

32 (b) On a showing that notice would expose the child or [either] A party to abuse

1 as defined in § 4–501 of this article or for any other good cause the court shall waive the
2 notice required by this section.

3 (c) If [either] A party is required to relocate in less than the 90–day period
4 specified in the notice requirement, the court may consider as a defense to any action
5 brought for a violation of the notice requirement that:

6 (1) relocation was necessary due to financial or other extenuating
7 circumstances; and

8 (2) the required notice was given within a reasonable time after learning
9 of the necessity to relocate.

10 (d) The court may consider any violation of the notice requirement as a factor in
11 determining the merits of any subsequent proceeding involving [custody or visitation]
12 **LEGAL DECISION–MAKING OR PARENTING TIME.**

13 [9–107.

14 (a) (1) In this section the following words have the meanings indicated.

15 (2) (i) “Disability” means:

16 1. a physical or mental impairment that substantially limits
17 one or more of an individual’s major life activities;

18 2. a record of having a physical or mental impairment that
19 substantially limits one or more of an individual’s major life activities; or

20 3. being regarded as having a physical or mental impairment
21 that substantially limits one or more of an individual’s major life activities.

22 (ii) “Disability” shall be construed in accordance with the ADA
23 Amendments Act of 2008, P.L. 110–325.

24 (3) “Supportive parenting services” means services that may assist an
25 individual with a disability in the effective use of techniques and methods to enable the
26 individual to discharge the individual’s responsibilities to a child as successfully as an
27 individual who does not have a disability, including nonvisual techniques for individuals
28 who are blind.

29 (b) (1) In any custody or visitation proceeding, the disability of a party is
30 relevant only to the extent that the court finds, based on evidence in the record, that the
31 disability affects the best interest of the child.

32 (2) The party alleging that the disability of the other party affects the best
33 interest of the child bears the burden of proving that the disability of the other party affects

1 the best interest of the child.

2 (3) If the burden of proof is met, the party who has a disability shall have
3 the opportunity to prove that supportive parenting services would prevent a finding that
4 the disability affects the best interest of the child.

5 (4) If the court finds that the disability of a party affects the best interest
6 of the child and denies or limits custody or visitation, the court shall specifically state in
7 writing:

8 (i) the basis for the finding; and

9 (ii) the reason that the provision of supportive parenting services is
10 not a reasonable accommodation to prevent the finding.]

11 [9–108.] **9–111.**

12 (a) In this section:

13 (1) “deployment” means compliance with military orders received by a
14 member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National
15 Guard, or any other Reserve component to report for combat operations or other active
16 service for which the member is required to report unaccompanied by any family member
17 or that is classified by the member’s branch as remote; and

18 (2) “deployment” does not include National Guard or Reserve annual
19 training, inactive duty days, or drill weekends.

20 (b) Any order or modification of an existing child custody or visitation order **OR**
21 **LEGAL DECISION–MAKING OR PARENTING–TIME ORDER** issued by a court during a
22 term of a deployment of a parent shall specifically reference the deployment of the parent.

23 (c) (1) A parent who petitions the court for an order or modification of an
24 existing child custody or visitation order **OR LEGAL DECISION–MAKING OR**
25 **PARENTING–TIME ORDER** after returning from a deployment shall specifically reference
26 the date of the end of the deployment in the petition.

27 (2) (i) If the petition under paragraph (1) of this subsection is filed
28 within 30 days after the end of the deployment of the parent, the court shall set a hearing
29 on the petition on an expedited basis.

30 (ii) If the court finds that extenuating circumstances prohibited the
31 filing of the petition within 30 days after the end of the deployment of the parent, the court
32 may set a hearing on the petition on an expedited basis whenever the petition is filed.

33 (d) Any [custody or visitation] **LEGAL DECISION–MAKING OR**

1 **PARENTING–TIME** order issued based on the deployment of a parent shall require that:

2 (1) the other parent reasonably accommodate the leave schedule of the
3 parent who is subject to the deployment;

4 (2) the other parent facilitate opportunities for telephone and electronic
5 mail contact between the parent who is subject to the deployment and the child during the
6 period of deployment; and

7 (3) the parent who is subject to the deployment provide timely information
8 regarding the parent’s leave schedule to the other parent.

9 **SUBTITLE 2. LEGAL DECISION–MAKING AND PARENTAL RESPONSIBILITY –**
10 **JUDICIAL DETERMINATIONS.**

11 **9–201.**

12 **THE PURPOSES OF THIS SUBTITLE ARE TO:**

13 (1) **PROMOTE STABILITY AND LONG–TERM HEALTH AND WELFARE**
14 **FOR CHILDREN BY:**

15 (I) **ENSURING THAT CHILDREN HAVE FREQUENT, REGULAR,**
16 **CONTINUING, AND EXTENDED CONTACT WITH PARENTS WHO HAVE THE ABILITY TO**
17 **ACT IN THE BEST INTEREST OF THEIR CHILDREN;**

18 (II) **CREATING FAMILY AND CASE–SPECIFIC PARENTING–TIME**
19 **SCHEDULES FOR DAY–TO–DAY ACCESS, SHARED HOLIDAYS, VACATIONS, CULTURAL**
20 **OR RELIGIOUS EVENTS, AND PARTICIPATION IN SPECIAL OCCASIONS WITH THE**
21 **EXTENDED FAMILY OF THE PARENTS;**

22 (III) **ENCOURAGING PARENTS TO SHARE IN THE RIGHTS AND**
23 **RESPONSIBILITIES OF RAISING THEIR CHILDREN WHEN THE PARENTS DO NOT**
24 **RESIDE TOGETHER; AND**

25 (IV) **FOSTERING CHILDREN’S RELATIONSHIPS WITH SIBLINGS**
26 **AND WITH SIGNIFICANT ADULTS IN THE CHILDREN’S LIVES;**

27 (2) **PROVIDE CHILDREN WITH PHYSICAL AND EMOTIONAL SECURITY**
28 **AND PROTECTION FROM EXPOSURE TO CONFLICT AND VIOLENCE; AND**

29 (3) **PROVIDE FOR AN EXPEDITIOUS, THOUGHTFUL, AND CONSISTENT**
30 **PROCESS FOR DECISION–MAKING BY COURTS TO PROTECT THE BEST INTEREST OF**
31 **CHILDREN.**

1 **9-202.**

2 (A) SUBJECT TO THE PROVISIONS OF §§ 9-104, 9-105, AND 9-106 OF THIS
3 TITLE, IN DETERMINING WHAT LEGAL DECISION-MAKING AUTHORITY AND
4 PARENTING TIME IS IN THE BEST INTEREST OF THE CHILD, THE COURT MAY
5 CONSIDER THE FOLLOWING FACTORS:

6 (1) STABILITY AND THE FORESEEABLE HEALTH AND WELFARE OF THE
7 CHILD;

8 (2) FREQUENT, REGULAR, AND CONTINUING CONTACT WITH PARENTS
9 WHO CAN ACT IN THE CHILD'S BEST INTEREST;

10 (3) WHETHER AND HOW PARENTS WHO DO NOT LIVE TOGETHER WILL
11 SHARE THE RIGHTS AND RESPONSIBILITIES OF RAISING THE CHILD;

12 (4) THE CHILD'S RELATIONSHIP WITH EACH PARENT, ANY SIBLINGS,
13 OTHER RELATIVES, AND INDIVIDUALS WHO ARE OR MAY BECOME IMPORTANT IN THE
14 CHILD'S LIFE;

15 (5) THE CHILD'S PHYSICAL AND EMOTIONAL SECURITY AND
16 PROTECTION FROM CONFLICT AND VIOLENCE;

17 (6) THE CHILD'S DEVELOPMENTAL NEEDS, INCLUDING PHYSICAL
18 SAFETY, EMOTIONAL SECURITY, POSITIVE SELF-IMAGE, INTERPERSONAL SKILLS,
19 AND INTELLECTUAL AND COGNITIVE GROWTH;

20 (7) THE DAY-TO-DAY NEEDS OF THE CHILD, INCLUDING EDUCATION,
21 SOCIALIZATION, CULTURE AND RELIGION, FOOD, SHELTER, CLOTHING, AND
22 MENTAL AND PHYSICAL HEALTH;

23 (8) HOW TO:

24 (I) PLACE THE CHILD'S NEEDS ABOVE THE PARENTS' NEEDS;

25 (II) PROTECT THE CHILD FROM THE NEGATIVE EFFECTS OF ANY
26 CONFLICT BETWEEN THE PARENTS; AND

27 (III) MAINTAIN THE CHILD'S RELATIONSHIP WITH THE PARENTS,
28 SIBLINGS, OTHER RELATIVES, OR OTHER INDIVIDUALS WHO HAVE OR LIKELY MAY
29 HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;

30 (9) THE AGE OF THE CHILD;

1 **(10) ANY MILITARY DEPLOYMENT OF A PARENT AND ITS EFFECT, IF**
2 **ANY, ON THE PARENT-CHILD RELATIONSHIP;**

3 **(11) ANY PRIOR COURT ORDERS OR AGREEMENTS;**

4 **(12) EACH PARENT'S ROLE AND TASKS RELATED TO THE CHILD AND**
5 **HOW, IF AT ALL, THOSE ROLES AND TASKS HAVE CHANGED;**

6 **(13) THE LOCATION OF EACH PARENT'S HOME AS IT RELATES TO THEIR**
7 **ABILITY TO COORDINATE PARENTING TIME, SCHOOL, AND ACTIVITIES;**

8 **(14) THE PARENTS' RELATIONSHIP WITH EACH OTHER, INCLUDING:**

9 **(I) HOW THEY COMMUNICATE WITH EACH OTHER;**

10 **(II) WHETHER THEY CAN CO-PARENT WITHOUT DISRUPTING**
11 **THE CHILD'S SOCIAL AND SCHOOL LIFE; AND**

12 **(III) HOW THE PARENTS WILL RESOLVE ANY DISPUTES IN THE**
13 **FUTURE WITHOUT THE NEED FOR COURT INTERVENTION;**

14 **(15) THE CHILD'S PREFERENCE, IF AGE-APPROPRIATE; AND**

15 **(16) ANY OTHER FACTOR THAT THE COURT CONSIDERS APPROPRIATE**
16 **IN DETERMINING HOW TO BEST SERVE THE PHYSICAL, DEVELOPMENTAL, AND**
17 **EMOTIONAL NEEDS OF THE CHILD.**

18 **(B) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE RECORD**
19 **OR IN A WRITTEN OPINION, INCLUDING THE CONSIDERATION OF EACH FACTOR**
20 **LISTED IN SUBSECTION (A) OF THIS SECTION AND ANY OTHER FACTOR THAT THE**
21 **COURT CONSIDERED.**

22 **9-203.**

23 **(A) IF THE COURT DETERMINES THAT THE PARENTS ARE ABLE TO**
24 **COMMUNICATE AND REACH JOINT DECISIONS CONCERNING SOME OR ALL OF THE**
25 **CHILD'S NEEDS DESCRIBED IN § 9-202(A) OF THIS SUBTITLE, THE COURT MAY**
26 **AWARD:**

27 **(1) JOINT LEGAL DECISION-MAKING TO THE PARENTS;**

28 **(2) JOINT LEGAL DECISION-MAKING TO THE PARENTS, DESIGNATING**
29 **ONE PARENT TO MAKE FINAL DECISIONS IF THE PARENTS ARE UNABLE TO AGREE**
30 **AFTER A THOROUGH DISCUSSION OF THE ISSUES; OR**

1 **(3) JOINT LEGAL DECISION-MAKING TO THE PARENTS, ALLOCATING**
2 **RESPONSIBILITY FOR SPECIFIC ISSUES TO EACH PARENT, IF THE PARENTS ARE**
3 **UNABLE TO AGREE AFTER A THOROUGH DISCUSSION OF THE ISSUES.**

4 **(B) IF THE COURT AWARDS JOINT LEGAL DECISION-MAKING AUTHORITY**
5 **UNDER SUBSECTION (A)(1) OF THIS SECTION, NO PARENT, WITHOUT AGREEMENT OF**
6 **THE OTHER PARENT OR PARENTS OR ORDER OF THE COURT, MAY UNILATERALLY**
7 **MAKE MAJOR DECISIONS INVOLVING THE CHILD'S HEALTH, EDUCATION, RELIGION,**
8 **CULTURE, OR MEDICAL CARE OR ANY OTHER MATTER OF MAJOR SIGNIFICANCE**
9 **CONCERNING THE CHILD'S LIFE OR WELFARE.**

10 **9-204.**

11 **(A) THE COURT MAY MODIFY, IN ACCORDANCE WITH THE PROVISIONS OF**
12 **THIS SUBTITLE, A CHILD CUSTODY OR VISITATION ORDER OR A LEGAL**
13 **DECISION-MAKING OR PARENTING-TIME ORDER IF THE COURT DETERMINES THAT**
14 **THERE HAS BEEN A MATERIAL CHANGE IN CIRCUMSTANCES SINCE THE ISSUANCE OF**
15 **THE ORDER THAT RELATES TO THE NEEDS OF THE CHILD OR THE ABILITY OF THE**
16 **PARENTS TO MEET THOSE NEEDS AND SUCH MODIFICATION IS IN THE BEST**
17 **INTEREST OF THE CHILD.**

18 **(B) A PARENT'S PROPOSAL TO RELOCATE THE RESIDENCE OF THE PARENT**
19 **OR THE CHILD IN A WAY THAT WOULD CAUSE PARENTING TIME TO BE**
20 **IMPRACTICABLE CONSTITUTES A MATERIAL CHANGE IN CIRCUMSTANCES.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2022.