

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 947
Judiciary

(Delegate Shoemaker)

Family Law - Joint Custody

This bill establishes, in an initial child custody proceeding (whether *pendente lite* or permanent) involving the parents of a child in which there is no allegation of abuse, a rebuttable presumption that (1) joint legal custody is in the best interest of the child and (2) joint physical custody for approximately equal periods of time is in the best interest of the child. Notwithstanding § 12-202 of the Family Law Article (governing the use of the State child support guidelines) or any other provision of law, if joint legal and physical custody is awarded, (1) the parties must share equally the costs of the child's school clothes, supplies, extracurricular activities, and uncovered medical expenses and (2) each party generally must pay for the costs of supporting the child when in that party's care.

Fiscal Summary

State Effect: The bill does not materially affect the operations or finances of the Judiciary. Potential impact on federal funding, as discussed below.

Local Effect: The bill does not materially affect the operations or finances of the circuit courts.

Small Business Effect: None.

Analysis

Current Law:

Child Custody Determinations

In General: Maryland courts resolve child custody disputes based on a determination of “what is in the child’s best interests.” However, the factors to be considered by a court in making such a determination are not specified in statute but have instead been developed through case law. The criteria for judicial determination include, but are 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).

Joint Custody: 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.

Evidence of Abuse or Neglect: In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court must determine whether 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 likelihood of further child abuse or neglect by the party, the court must deny custody or visitation rights to that party. However, the court is authorized to approve a supervised visitation arrangement that assures the safety and physiological, psychological, and emotional well-being of the child.

The court must consider evidence of abuse by a party against the other parent of the party's child, the party's spouse, or any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation proceeding. If the court finds that the party has committed abuse against any of these individuals, it must make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of the abuse.

Parents with Specified Convictions: Unless good cause for the award of custody or visitation with a child is shown by clear and convincing evidence, a court may not award custody or visitation to a parent who has been found guilty of first- or second-degree murder (or similar acts in another jurisdiction) of specified individuals. If it is in the best interest of the child, however, a court may approve a supervised visitation arrangement that assures the safety and the psychological, physiological, and emotional well-being of the child.

Child Support Guidelines

In General: In a proceeding to establish or modify child support, whether *pendente lite* or permanent, the court is required to use the child support guidelines (subject to provisions below that authorize a departure from the guidelines if specified determinations are made). The basic child support obligation is established in accordance with a schedule provided in statute. The current schedule uses the combined monthly adjusted actual income of both parents and the number of children for whom support is required to determine the basic child support obligation. Adjusted actual income, which is the basis for determining the basic child support obligation, is calculated from actual income minus preexisting reasonable child support obligations actually paid and, except as specified, alimony or maintenance obligations actually paid. The child support statute establishes a rebuttable

presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support that the court is to award. The presumption may be rebutted, however, by evidence that the application of the guidelines would be unjust or inappropriate in a particular case. If the court determines that application of the guidelines would be unjust or inappropriate in a particular case, the court must make a written finding or specific finding on the record that states the reasons for departure from the guidelines, as required by statute.

Shared Physical Custody: In cases of shared physical custody, the basic child support obligation must first be divided between the parents in proportion to their respective adjusted actual income. Each parent's share of the basic child support obligation must then be multiplied by the percentage of time the child or children spend with the other parent to determine the adjusted basic child support obligation owed to the other parent. Under the child support guidelines, "shared physical custody" means that each parent keeps the child or children overnight for more than 25% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support. The court may base a child support award on shared physical custody solely on the amount of visitation awarded and regardless of whether joint custody has been granted.

State Fiscal Effect: As a condition of federal funding, states are generally required to adopt presumptive child support guidelines and use the guidelines when calculating financial support amounts. Federal fund revenues may be impacted if the bill is interpreted as a departure from the use of the guidelines in cases where joint legal and physical custody is awarded and deemed to be contrary to federal requirements. Any potential impact has not been accounted for in this analysis.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510