

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 849 (Senator West)
Judicial Proceedings

Child Custody – Legal Decision–Making and Parenting Time

This bill alters provisions of law relating to child custody and visitation proceedings and establishes numerous factors for courts to consider in cases involving legal decision making and parenting time.

Fiscal Summary

State Effect: The bill does not materially affect the operations or finances of the Judiciary.

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

Small Business Effect: None.

Analysis

Bill Summary:

Legal Decision Making and Parenting Time

“Legal decision making” means the right and obligation to make major long-term decisions involving medical care, mental health, education, religious training, extracurricular activities, and other matters of major significance concerning a child’s life and welfare. Legal decision making is also known as legal custody.

“Parenting time” means the time a child is in a parent’s care according to an agreement or court-ordered schedule and the right and obligation of a parent to provide a home for the

child, address the child's needs, and make the day-to-day decisions required during the time the child is with that parent. Parenting time is also known as physical custody, visitation, or access.

The bill alters numerous references to the terms "child custody" and "visitation" to "legal decision making" and "parenting time." The bill establishes that a court may award legal decision making or parenting time to one parent or jointly to the parents. No parent is presumed to have any right to legal decision making or parenting time that is superior to the right of another parent. The bill also specifies that a parent is a biological parent, an adoptive parent, or an individual a court has deemed to be a *de facto* parent.

Legal Decision Making and Parental Responsibility – Judicial Determinations

The bill establishes a new subtitle that specifies numerous factors for judicial consideration in cases involving legal decision making and parental responsibility. The purpose of the provisions include (1) promoting stability and long-term health and welfare for children by specified methods; (2) providing children with physical and emotional security and protection from exposure to conflict and violence; and (3) providing for an expeditious, thoughtful, and consistent process for decision making by courts to protect the best interests of children.

Subject to specified statutory provisions regarding evidence of abuse and neglect and individuals with specified convictions, in determining what legal decision making authority and parenting time is in the best interest of the child, the court may consider specified factors, including:

- whether and how parents who do not live together will share the rights and responsibilities of raising the child;
- the child's relationship with each parent, any siblings, other relatives, and individuals who are or may become important in the child's life;
- the child's physical and emotional security and protection from conflict and violence;
- the child's developmental needs, including physical safety, emotional security, positive self-image, interpersonal skills, and intellectual and cognitive growth;
- the day-to-day needs of the child, including specified items;
- how to place the child's needs above the parents' needs; protect the child from the negative effects of any conflict between the parents; and maintain the child's relationship with other individuals, as specified;
- each parent's role and tasks related to the child and how, if at all, those roles and tasks have changed; and

- any other factor that the court considers appropriate in determining how to best serve the physical, developmental, and emotional needs of the child.

The court must articulate its findings of fact on the record or in a written opinion, including the consideration of each listed factor and any other factor the court considered.

Legal Decision Making

If the court determines that the parents are able to communicate and reach joint decisions concerning some or all of the child's needs as described above, the court may award (1) joint legal decision making to the parents; (2) joint legal decision making to the parents, designating one parent to make final decisions if the parents are unable to agree after a thorough discussion of the issues; or (3) joint legal decision making to the parents, allocating responsibility for specific issues to each parent, if the parents are unable to agree after a thorough discussion of the issues.

If the court awards joint legal decision making authority to the parents, no parent, without agreement of the other parent/parents or order of the court, may unilaterally make major decisions involving the child's health, education, religion, culture, or medical care or any other matter of major significance concerning the child's life or welfare.

Modifications

The court may modify a child custody or visitation order or a legal decision making or parenting time order if the court determines that there has been a material change in circumstances since the issuance of the order that relates to the needs of the child or the ability of the parents to meet those needs and such modification is in the best interest of the child. A parent's proposal to relocate the residence of the parent or the child in a way that would cause parenting time to be impracticable constitutes a material change in circumstances.

Disability

The bill repeals provisions relating to disabilities and how the disability of a party may be considered in making decisions regarding custody or visitation.

Current Law:

Child Custody Determinations

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).

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.

Custody – 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.

Custody – 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.

Disability

“Disability” is defined as (1) a physical or mental impairment that substantially limits one or more of an individual's major life activities; (2) a record of having a physical or mental impairment that substantially limits one or more of an individual's major life activities; or (3) being regarded as having a physical or mental impairment that substantially limits one or more of an individual's major life activities. In addition, “disability” must be construed in accordance with the Americans with Disabilities Amendments Act of 2008. In any custody or visitation proceeding, a disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child. The party alleging that the disability of the other party affects the best interest of the child bears the burden of proof. If the burden of proof is met, the party who has a disability must have an opportunity to prove that supportive parenting services would prevent a finding that the disability affects the best interest of the child. If the court finds that a party's disability affects the child's best interest

and denies or limits custody or visitation, the court must specifically state in writing the basis for the finding and its reasoning regarding supportive parenting services, as specified.

Additional Information

Prior Introductions: Similar bills have been introduced during previous legislative sessions. HB 505 of 2021 passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee; no further action was taken. HB 1328 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. HB 1032 of 2018 received a hearing in the House Judiciary Committee but was subsequently withdrawn. Its cross file, SB 684, received an unfavorable report from the Senate Judicial Proceedings Committee. Similar bills were also introduced in 2015 to 2017.

Designated Cross File: HB 1168 (Delegate McComas, *et al.*) - Judiciary.

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

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