

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1386
Judiciary

(Delegate Carter, *et al.*)

Child Custody - Rebuttable Presumption of Joint Custody

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 joint physical custody for approximately equal periods of time for each parent and joint legal custody is in the best interests of the child. The bill specifies factors that may be considered in determining the best interests of the child. If the court determines by a preponderance of the evidence that a joint custody arrangement is not in the best interests of the child, the court may award sole custody to one parent and must enter on the record the factors considered by the court in reaching its decision.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: The rebuttable presumption established by the bill is regardless of a parent's marital status or gender. In determining the best interests of the child, the court may consider the following factors: (1) the preferences of the child if the court determines that the child is of a sufficient emotional maturity and mental capacity, regardless of the child's age; (2) the distance between the residences of the parents; (3) the distance between each parent's residence and the child's school; (4) the flexibility of each parent's work

schedule; (5) each parent's ability to assist with after school care; and (6) any other factor the court finds relevant.

If the court determines that joint custody is not in the best interests of the child, the court must award visitation in a manner that ensures frequent and continuing contact between the child and the noncustodial parent.

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: The Commission on Child Custody Decision Making, which was established by Chapter 633 of 2013, was required to study numerous aspects of custody, including a review of statutes from other states used for child custody determinations. According to the commission's final report, only seven states have a presumption of joint physical custody in the absence of agreement of the parents. A preference for joint legal custody appeared in the statutes of six jurisdictions.

State/Local Fiscal Effect: The 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 custody arrangement are required to rebut the presumption established in the bill. The 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 888 of 2015, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 650, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 1004 of 2014, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1440, received a hearing in the House Judiciary Committee, but received no further action. Similar bills were also considered in the 2011, 2010, 2007, 2004, and 2003 sessions.

Cross File: SB 962 (Senator Muse) - Judicial Proceedings.

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

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