

SENATE BILL 57

D4

(PRE-FILED)

11r0814
CF HB 748

By: **Senator Lee**

Requested: October 2, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 19, 2021

CHAPTER _____

1 AN ACT concerning

2 **Family Law – Child Custody and Visitation**

3 FOR the purpose of requiring a court, in a custody or visitation proceeding, to deny custody
4 or visitation rights to a certain party under certain circumstances, unless the court
5 makes a certain finding and states the reasons for the finding; authorizing the court
6 to approve a supervised visitation arrangement under certain circumstances;
7 providing that any reasonable effort to protect a child or a party to a custody or
8 visitation order from the other party may not be deemed an unjustifiable denial or
9 interference with visitation under a certain provision of law; ~~establishing that there~~
10 ~~is no presumption that joint custody is in the best interest of the child in a child~~
11 ~~custody or visitation proceeding; requiring the court, in determining the best interest~~
12 ~~of the child in a custody or visitation proceeding, to give extra weight to certain~~
13 ~~factors; requiring the court to consider certain factors; authorizing the court to~~
14 ~~consider certain factors; requiring the court to articulate certain findings of fact on~~
15 ~~the record; providing for the scope of certain provisions of this Act;~~ making certain
16 clarifying and conforming changes; and generally relating to child custody and
17 visitation.

18 BY repealing and reenacting, with amendments,
19 Article – Family Law
20 Section 9–101, ~~9–101.1~~, and 9–105
21 Annotated Code of Maryland
22 (2019 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~BY adding to~~
 2 ~~Article – Family Law~~
 3 ~~Section 9–109~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2019 Replacement Volume and 2020 Supplement)~~

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

8 **Article – Family Law**

9 9–101.

10 ~~(A) THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE~~
 11 ~~CASE.~~

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

16 ~~(A)~~ **(A)** [Unless the court specifically finds that there is no likelihood of further
 17 child abuse or neglect by the party, the] **EXCEPT AS PROVIDED IN SUBSECTION ~~(C)~~ (B)**
 18 **OF THIS SECTION, IN ANY CUSTODY OR VISITATION PROCEEDING, THE** court shall
 19 deny custody or visitation rights to [that party, except that the court may approve a
 20 supervised visitation arrangement that assures the safety and the physiological,
 21 psychological, and emotional well-being of the child] **A PARTY IF THE COURT ~~HAS~~**
 22 **REASONABLE GROUNDS TO BELIEVE FINDS BY A PREPONDERANCE OF THE**
 23 **EVIDENCE THAT A CHILD HAS BEEN ABUSED OR NEGLECTED BY THE PARTY, UNLESS**
 24 **THE COURT:**

25 **(1) SPECIFICALLY FINDS THAT THERE IS NO LIKELIHOOD OF**
 26 **FURTHER CHILD ABUSE OR NEGLECT BY THE PARTY; AND**

27 **(2) STATES WITH SPECIFICITY THE REASONS FOR THE FINDING THAT**
 28 **THERE IS NO LIKELIHOOD OF FURTHER CHILD ABUSE OR NEGLECT BY THE PARTY.**

29 ~~(C)~~ **(B)** **A COURT MAY APPROVE A SUPERVISED VISITATION**
 30 **ARRANGEMENT IF THE ARRANGEMENT:**

31 **(1) SPECIFICALLY TAKES INTO ACCOUNT THE TYPE OF CHILD ABUSE**
 32 **OR NEGLECT, INCLUDING WHETHER, IN THE CASE OF CHILD ABUSE, THE ABUSE WAS**
 33 **EMOTIONAL, PHYSICAL, OR SEXUAL; AND**

1 **(2) ASSURES THE SAFETY AND THE PHYSIOLOGICAL,**
 2 **PSYCHOLOGICAL, AND EMOTIONAL WELL-BEING OF THE CHILD.**

3 ~~9-101.1.~~

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

5 ~~**(B) THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE**~~
 6 ~~**CASE.**~~

7 ~~**[(b)] (C)** In a custody or visitation proceeding, the court shall consider, when~~
 8 ~~deciding custody or visitation issues, evidence of abuse by a party against:~~

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

10 ~~(2) the party's spouse; or~~

11 ~~(3) any child residing within the party's household, including a child other~~
 12 ~~than the child who is the subject of the custody or visitation proceeding.~~

13 ~~**[(c)] (D)** If the court finds that a party has committed abuse against the other~~
 14 ~~parent of the party's child, the party's spouse, or any child residing within the party's~~
 15 ~~household, the court shall make arrangements for custody or visitation that best protect:~~

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

17 ~~(2) the victim of the abuse.~~

18 9-105.

19 **(A)** In any custody or visitation proceeding, if the court determines that a party to
 20 a custody or visitation order has unjustifiably denied or interfered with visitation granted
 21 by a custody or visitation order, the court may, in addition to any other remedy available
 22 to the court and in a manner consistent with the best interests of the child, take any or all
 23 of the following actions:

24 (1) order that the visitation be rescheduled;

25 (2) modify the custody or visitation order to require additional terms or
 26 conditions designed to ensure future compliance with the order; or

27 (3) assess costs or counsel fees against the party who has unjustifiably
 28 denied or interfered with visitation rights.

29 **(B) ANY REASONABLE EFFORT TO PROTECT A CHILD OR A PARTY TO A**
 30 **CUSTODY OR VISITATION ORDER FROM THE OTHER PARTY MAY NOT BE CONSIDERED**

1 AN UNJUSTIFIABLE DENIAL OR INTERFERENCE WITH VISITATION GRANTED BY A
2 CUSTODY OR VISITATION ORDER.

3 ~~9-109.~~

4 ~~(A) THIS SECTION IS SUBJECT TO THE PROVISIONS OF §§ 9-101, 9-101.1,~~
5 ~~AND 9-101.2 OF THIS SUBTITLE.~~

6 ~~(B) THERE IS NO PRESUMPTION THAT JOINT CUSTODY IS IN THE BEST~~
7 ~~INTEREST OF THE CHILD.~~

8 ~~(C) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~
9 ~~BEST INTEREST OF THE CHILD, THE COURT SHALL GIVE EXTRA WEIGHT TO FACTORS~~
10 ~~LISTED IN SUBSECTIONS (E) AND (F) OF THIS SECTION THAT AFFECT THE PHYSICAL~~
11 ~~AND PSYCHOLOGICAL SAFETY OF THE CHILD.~~

12 ~~(D) IF A CASE INVOLVES DOMESTIC VIOLENCE OR CHILD ABUSE, THE COURT~~
13 ~~SHALL EXCLUDE ANY FACTORS LISTED IN SUBSECTIONS (E) AND (F) OF THIS~~
14 ~~SECTION THAT RELATE TO THE WILLINGNESS OF A PARTY TO FACILITATE CONTACT~~
15 ~~WITH THE CHILD OR THE OTHER PARTY.~~

16 ~~(E) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~
17 ~~BEST INTEREST OF THE CHILD, THE COURT SHALL CONSIDER THE FOLLOWING~~
18 ~~FACTORS:~~

19 ~~(1) THE ABILITY OF EACH OF THE PARTIES TO MEET THE CHILD'S~~
20 ~~DEVELOPMENTAL NEEDS, INCLUDING:~~

21 ~~(I) ENSURING PHYSICAL SAFETY;~~

22 ~~(II) SUPPORTING EMOTIONAL SECURITY AND POSITIVE~~
23 ~~SELF IMAGE;~~

24 ~~(III) PROMOTING INTERPERSONAL SKILLS; AND~~

25 ~~(IV) PROMOTING INTELLECTUAL AND COGNITIVE GROWTH;~~

26 ~~(2) THE RELATIONSHIP BETWEEN THE CHILD AND THE PARTIES, THE~~
27 ~~CHILD'S SIBLINGS, OTHER RELATIVES, AND ANY OTHER PERSON WHO HAS A~~
28 ~~SIGNIFICANT RELATIONSHIP WITH THE CHILD;~~

29 ~~(3) THE ABILITY OF EACH PARTY TO MEET THE DAY-TO-DAY NEEDS~~
30 ~~OF THE CHILD, INCLUDING:~~

- 1 ~~(I) EDUCATION;~~
- 2 ~~(II) SOCIALIZATION;~~
- 3 ~~(III) CULTURE AND RELIGION;~~
- 4 ~~(IV) FOOD;~~
- 5 ~~(V) SHELTER;~~
- 6 ~~(VI) CLOTHING; AND~~
- 7 ~~(VII) MENTAL AND PHYSICAL HEALTH;~~
- 8 ~~(4) THE ABILITY OF EACH PARTY TO:~~
- 9 ~~(I) CONSIDER AND ACT ON THE NEEDS OF THE CHILD, AS~~
10 ~~OPPOSED TO THE NEEDS OR DESIRES OF THE PARTY;~~
- 11 ~~(II) PROTECT THE CHILD FROM THE ADVERSE EFFECTS OF ANY~~
12 ~~CONFLICT BETWEEN THE PARTIES; AND~~
- 13 ~~(III) MAINTAIN, FOSTER, AND FACILITATE RELATIONSHIPS WITH~~
14 ~~THE OTHER PARTY, SIBLINGS, OTHER RELATIVES, AND OTHER INDIVIDUALS WHO~~
15 ~~HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;~~
- 16 ~~(5) THE HISTORY OF ANY EFFORTS BY A PARTY TO INTERFERE WITH~~
17 ~~THE CHILD'S RELATIONSHIP WITH THE OTHER PARTY;~~
- 18 ~~(6) ANY EVIDENCE OF EXPOSURE OF THE CHILD TO DOMESTIC~~
19 ~~VIOLENCE, CHILD ABUSE, OR CHILD NEGLECT;~~
- 20 ~~(7) THE AGE AND GENDER OF THE CHILD; AND~~
- 21 ~~(8) MILITARY DEPLOYMENT OF A PARTY.~~
- 22 ~~(F) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~
23 ~~BEST INTEREST OF THE CHILD, THE COURT MAY CONSIDER THE FOLLOWING~~
24 ~~FACTORS:~~
- 25 ~~(1) EVIDENCE OF ANY PRIOR COURT ORDERS OR AGREEMENTS~~
26 ~~BETWEEN THE PARTIES, INCLUDING PRIOR AGREEMENTS CONCERNING THE~~
27 ~~CHILD'S CUSTODIAL ARRANGEMENTS OR PARENTING RESPONSIBILITIES FOR THE~~
28 ~~CHILD;~~

1 ~~(2) THE PARENTAL RESPONSIBILITIES AND THE PARTICULAR~~
2 ~~PARENTING TASKS CUSTOMARILY PERFORMED BY EACH PARTY, INCLUDING:~~

3 ~~(I) TASKS AND RESPONSIBILITIES PERFORMED:~~

4 ~~1. BEFORE THE INITIATION OF LITIGATION;~~

5 ~~2. DURING THE PENDING LITIGATION; AND~~

6 ~~3. AFTER THE ISSUANCE OF ORDERS OF COURT; AND~~

7 ~~(II) THE EXTENT TO WHICH THE TASKS AND RESPONSIBILITIES~~
8 ~~HAVE BEEN OR WILL BE UNDERTAKEN BY THIRD PARTIES;~~

9 ~~(3) THE PROXIMITY OF THE PARTIES' HOMES AS IT RELATES TO THEIR~~
10 ~~ABILITY TO COORDINATE CUSTODY AND VISITATION, SCHOOL, AND ACTIVITIES;~~

11 ~~(4) THE RELATIONSHIP BETWEEN THE PARTIES, INCLUDING THE~~
12 ~~ABILITY OF EACH PARTY TO:~~

13 ~~(I) EFFECTIVELY COMMUNICATE WITH THE OTHER PARTY; AND~~

14 ~~(II) CO PARENT THE CHILD WITHOUT DISRUPTION TO THE~~
15 ~~CHILD'S SOCIAL AND SCHOOL LIFE;~~

16 ~~(5) THE EXTENT TO WHICH EITHER PARTY HAS INITIATED OR~~
17 ~~ENGAGED IN FRIVOLOUS OR VEXATIOUS LITIGATION, AS DEFINED IN THE~~
18 ~~MARYLAND RULES;~~

19 ~~(6) THE CHILD'S PREFERENCE IF:~~

20 ~~(I) THE CHILD IS OF SUFFICIENT AGE AND CAPACITY TO FORM~~
21 ~~A PREFERENCE; AND~~

22 ~~(II) THE COURT CONSIDERS THE CHILD'S POSSIBLE~~
23 ~~SUSCEPTIBILITY TO MANIPULATION BY A PARTY OR BY OTHERS; AND~~

24 ~~(7) ANY OTHER FACTOR THAT THE COURT CONSIDERS APPROPRIATE~~
25 ~~IN DETERMINING HOW TO BEST SERVE THE PHYSICAL, DEVELOPMENTAL, AND~~
26 ~~EMOTIONAL NEEDS OF THE CHILD.~~

27 ~~(G) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE~~
28 ~~RECORD, INCLUDING:~~

1 ~~(1) THE CONSIDERATION OF EACH FACTOR LISTED IN SUBSECTION~~
2 ~~(E) OF THIS SECTION;~~

3 ~~(2) THE CONSIDERATION OF ANY FACTOR LISTED IN SUBSECTION (F)~~
4 ~~OF THIS SECTION;~~

5 ~~(3) THE CONSIDERATION OF ANY OTHER FACTOR THAT THE COURT~~
6 ~~CONSIDERED; AND~~

7 ~~(4) THE WEIGHT THE COURT GAVE TO EACH FACTOR THAT THE COURT~~
8 ~~CONSIDERED.~~

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2021.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.