

HOUSE BILL 748

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CF SB 57

By: **Delegate Atterbeary**

Introduced and read first time: January 29, 2021

Assigned to: Judiciary

A BILL ENTITLED

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)

23 BY adding to
24 Article – Family Law
25 Section 9–109
26 Annotated Code of Maryland
27 (2019 Replacement Volume and 2020 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Family Law**

3 9–101.

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

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

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

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

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

22 **(C) A COURT MAY APPROVE A SUPERVISED VISITATION ARRANGEMENT IF**
23 **THE ARRANGEMENT:**

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

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

29 9–101.1.

30 (a) In this section, “abuse” has the meaning stated in § 4–501 of this article.

31 **(B) THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE**
32 **CASE.**

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

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

4 (2) the party's spouse; or

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

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

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

11 (2) the victim of the abuse.

12 9–105.

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

18 (1) order that the visitation be rescheduled;

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

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

23 **(B)** **ANY REASONABLE EFFORT TO PROTECT A CHILD OR A PARTY TO A**
24 **CUSTODY OR VISITATION ORDER FROM THE OTHER PARTY MAY NOT BE CONSIDERED**
25 **AN UNJUSTIFIABLE DENIAL OR INTERFERENCE WITH VISITATION GRANTED BY A**
26 **CUSTODY OR VISITATION ORDER.**

27 9–109.

28 **(A)** **THIS SECTION IS SUBJECT TO THE PROVISIONS OF §§ 9–101, 9–101.1,**
29 **AND 9–101.2 OF THIS SUBTITLE.**

30 **(B)** **THERE IS NO PRESUMPTION THAT JOINT CUSTODY IS IN THE BEST**

1 INTEREST OF THE CHILD.

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

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

10 (E) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE
11 BEST INTEREST OF THE CHILD, THE COURT SHALL CONSIDER THE FOLLOWING
12 FACTORS:

13 (1) THE ABILITY OF EACH OF THE PARTIES TO MEET THE CHILD'S
14 DEVELOPMENTAL NEEDS, INCLUDING:

15 (I) ENSURING PHYSICAL SAFETY;

16 (II) SUPPORTING EMOTIONAL SECURITY AND POSITIVE
17 SELF-IMAGE;

18 (III) PROMOTING INTERPERSONAL SKILLS; AND

19 (IV) PROMOTING INTELLECTUAL AND COGNITIVE GROWTH;

20 (2) THE RELATIONSHIP BETWEEN THE CHILD AND THE PARTIES, THE
21 CHILD'S SIBLINGS, OTHER RELATIVES, AND ANY OTHER PERSON WHO HAS A
22 SIGNIFICANT RELATIONSHIP WITH THE CHILD;

23 (3) THE ABILITY OF EACH PARTY TO MEET THE DAY-TO-DAY NEEDS
24 OF THE CHILD, INCLUDING:

25 (I) EDUCATION;

26 (II) SOCIALIZATION;

27 (III) CULTURE AND RELIGION;

28 (IV) FOOD;

1 (V) SHELTER;

2 (VI) CLOTHING; AND

3 (VII) MENTAL AND PHYSICAL HEALTH;

4 (4) THE ABILITY OF EACH PARTY TO:

5 (I) CONSIDER AND ACT ON THE NEEDS OF THE CHILD, AS
6 OPPOSED TO THE NEEDS OR DESIRES OF THE PARTY;

7 (II) PROTECT THE CHILD FROM THE ADVERSE EFFECTS OF ANY
8 CONFLICT BETWEEN THE PARTIES; AND

9 (III) MAINTAIN, FOSTER, AND FACILITATE RELATIONSHIPS WITH
10 THE OTHER PARTY, SIBLINGS, OTHER RELATIVES, AND OTHER INDIVIDUALS WHO
11 HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;

12 (5) THE HISTORY OF ANY EFFORTS BY A PARTY TO INTERFERE WITH
13 THE CHILD'S RELATIONSHIP WITH THE OTHER PARTY;

14 (6) ANY EVIDENCE OF EXPOSURE OF THE CHILD TO DOMESTIC
15 VIOLENCE, CHILD ABUSE, OR CHILD NEGLECT;

16 (7) THE AGE AND GENDER OF THE CHILD; AND

17 (8) MILITARY DEPLOYMENT OF A PARTY.

18 (F) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE
19 BEST INTEREST OF THE CHILD, THE COURT MAY CONSIDER THE FOLLOWING
20 FACTORS:

21 (1) EVIDENCE OF ANY PRIOR COURT ORDERS OR AGREEMENTS
22 BETWEEN THE PARTIES, INCLUDING PRIOR AGREEMENTS CONCERNING THE
23 CHILD'S CUSTODIAL ARRANGEMENTS OR PARENTING RESPONSIBILITIES FOR THE
24 CHILD;

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

27 (I) TASKS AND RESPONSIBILITIES PERFORMED:

28 1. BEFORE THE INITIATION OF LITIGATION;

1 **2. DURING THE PENDING LITIGATION; AND**

2 **3. AFTER THE ISSUANCE OF ORDERS OF COURT; AND**

3 **(II) THE EXTENT TO WHICH THE TASKS AND RESPONSIBILITIES**
4 **HAVE BEEN OR WILL BE UNDERTAKEN BY THIRD PARTIES;**

5 **(3) THE PROXIMITY OF THE PARTIES’ HOMES AS IT RELATES TO THEIR**
6 **ABILITY TO COORDINATE CUSTODY AND VISITATION, SCHOOL, AND ACTIVITIES;**

7 **(4) THE RELATIONSHIP BETWEEN THE PARTIES, INCLUDING THE**
8 **ABILITY OF EACH PARTY TO:**

9 **(I) EFFECTIVELY COMMUNICATE WITH THE OTHER PARTY; AND**

10 **(II) CO-PARENT THE CHILD WITHOUT DISRUPTION TO THE**
11 **CHILD’S SOCIAL AND SCHOOL LIFE;**

12 **(5) THE EXTENT TO WHICH EITHER PARTY HAS INITIATED OR**
13 **ENGAGED IN FRIVOLOUS OR VEXATIOUS LITIGATION, AS DEFINED IN THE**
14 **MARYLAND RULES;**

15 **(6) THE CHILD’S PREFERENCE IF:**

16 **(I) THE CHILD IS OF SUFFICIENT AGE AND CAPACITY TO FORM**
17 **A PREFERENCE; AND**

18 **(II) THE COURT CONSIDERS THE CHILD’S POSSIBLE**
19 **SUSCEPTIBILITY TO MANIPULATION BY A PARTY OR BY OTHERS; AND**

20 **(7) ANY OTHER FACTOR THAT THE COURT CONSIDERS APPROPRIATE**
21 **IN DETERMINING HOW TO BEST SERVE THE PHYSICAL, DEVELOPMENTAL, AND**
22 **EMOTIONAL NEEDS OF THE CHILD.**

23 **(G) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE**
24 **RECORD, INCLUDING:**

25 **(1) THE CONSIDERATION OF EACH FACTOR LISTED IN SUBSECTION**
26 **(E) OF THIS SECTION;**

27 **(2) THE CONSIDERATION OF ANY FACTOR LISTED IN SUBSECTION (F)**
28 **OF THIS SECTION;**

1 **(3) THE CONSIDERATION OF ANY OTHER FACTOR THAT THE COURT**
2 **CONSIDERED; AND**

3 **(4) THE WEIGHT THE COURT GAVE TO EACH FACTOR THAT THE COURT**
4 **CONSIDERED.**

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