

HOUSE BILL 816

D4
HB 1139/10 – JUD

11r1622

By: **Delegate Dumais**
Introduced and read first time: February 11, 2011
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Child Custody Determinations**

3 FOR the purpose of specifying the procedures for court determinations of legal and
4 physical custody of minor children; requiring the court, in any proceeding
5 between parents in which the custody of a child is raised as an issue, to make a
6 determination as to legal and physical custody of the child; authorizing the
7 court to award certain forms of legal and physical custody; requiring the court,
8 in making a certain custody determination, to give primary consideration to the
9 best interest of the child; requiring the court, in determining the best interest of
10 the child, to consider certain factors; requiring the court, in making a certain
11 custody determination, to articulate its reasons on the record, including the
12 factors considered in the determination; authorizing the court to modify a
13 custody order or agreement under certain circumstances; specifying that this
14 Act may not be considered to be a material change of circumstances for purposes
15 of modifying a certain child custody order; defining certain terms; and generally
16 relating to child custody.

17 BY adding to
18 Article – Family Law
19 Section 9–501 through 9–506 to be under the new subtitle “Subtitle 5. Child
20 Custody Determinations”
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2010 Supplement)

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

25 **Article – Family Law**

26 **SUBTITLE 5. CHILD CUSTODY DETERMINATIONS.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 **9-501.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "LEGAL CUSTODY" MEANS THE RIGHT AND OBLIGATION TO MAKE
5 LONG-RANGE DECISIONS INVOLVING EDUCATION, RELIGIOUS TRAINING,
6 DISCIPLINE, MEDICAL CARE, AND OTHER MATTERS OF MAJOR SIGNIFICANCE
7 CONCERNING THE CHILD'S LIFE AND WELFARE.

8 (C) "PHYSICAL CUSTODY" MEANS:

9 (1) THE TIME THE CHILD IS IN A PARENT'S CARE ACCORDING TO
10 AN AGREED-ON OR A COURT-ORDERED SCHEDULE; AND

11 (2) THE RIGHT AND OBLIGATION OF A PARENT TO PROVIDE A
12 HOME FOR THE CHILD AND TO MAKE THE DAY-TO-DAY DECISIONS REQUIRED
13 DURING THE TIME THE CHILD IS WITH THAT PARENT.

14 **9-502.**

15 (A) THIS SUBTITLE GOVERNS COURT DETERMINATIONS OF LEGAL AND
16 PHYSICAL CUSTODY OF MINOR CHILDREN.

17 (B) THIS SUBTITLE SHALL BE CONSTRUED TO FOSTER THE RIGHT OF
18 EACH CHILD TO THE BENEFITS OF THE GUARDIANSHIP OF BOTH OF THE CHILD'S
19 PARENTS CONSISTENT WITH THE PROVISIONS OF § 5-203 OF THIS ARTICLE AND
20 THE BEST INTEREST OF THE CHILD.

21 (C) IN THIS SUBTITLE AN UNDEFINED WORD OR PHRASE THAT
22 DESCRIBES A FACTOR TO BE CONSIDERED IN THE DETERMINATION OF THE BEST
23 INTEREST OF THE CHILD RETAINS ITS JUDICIALLY DETERMINED MEANING.

24 **9-503.**

25 THE PURPOSES OF THIS SUBTITLE ARE TO SERVE THE BEST INTERESTS
26 OF CHILDREN AND TO:

27 (1) PROMOTE STABILITY FOR CHILDREN;

28 (2) PROVIDE CONTINUITY OF POSITIVE PARENT-CHILD
29 RELATIONSHIPS;

1 (3) SUBJECT TO THE PROVISIONS OF §§ 9-101, 9-101.1, AND
2 9-101.2 OF THIS TITLE, PROMOTE FREQUENT AND CONTINUING CONTACT
3 BETWEEN A CHILD AND PARENTS WHO ARE SEPARATED OR DIVORCED OR WERE
4 NEVER MARRIED;

5 (4) PROVIDE CHILDREN WITH PHYSICAL AND EMOTIONAL
6 SECURITY AND PROTECTION FROM EXPOSURE TO CONFLICT AND VIOLENCE;

7 (5) SUBJECT TO THE PROVISIONS OF §§ 9-101, 9-101.1, AND
8 9-101.2 OF THIS TITLE, PROVIDE EACH CHILD A REASONABLE MAXIMUM
9 OPPORTUNITY TO DEVELOP A CLOSE AND LOVING RELATIONSHIP WITH EACH
10 PARENT;

11 (6) PROVIDE FOR AN EXPEDITIOUS, THOUGHTFUL, AND
12 CONSISTENT PROCESS FOR DECISION MAKING BY COURTS; AND

13 (7) PREVENT THE UNNECESSARY SEPARATION OF SIBLINGS.

14 **9-504.**

15 (A) IN ANY PROCEEDING BETWEEN PARENTS IN WHICH THE CUSTODY
16 OF A CHILD IS RAISED AS AN ISSUE, THE COURT SHALL MAKE A DETERMINATION
17 AS TO LEGAL AND PHYSICAL CUSTODY OF THE CHILD IN ACCORDANCE WITH THE
18 PROVISIONS OF THIS SUBTITLE.

19 (B) SUBJECT TO THE PROVISIONS OF § 9-505 OF THIS SUBTITLE, THE
20 COURT MAY AWARD THE FOLLOWING FORMS OF CUSTODY, NOT LISTED IN
21 ORDER OF PRIORITY:

22 (1) LEGAL CUSTODY AS FOLLOWS:

23 (I) JOINT LEGAL CUSTODY TO BOTH OF THE PARENTS;

24 (II) JOINT LEGAL CUSTODY TO BOTH OF THE PARENTS WITH
25 ONE OF THE PARENTS RESPONSIBLE FOR MAKING A FINAL DECISION IF, AFTER
26 THOROUGH DISCUSSION BETWEEN THE PARENTS, THEY CANNOT REACH A
27 SHARED DECISION; OR

28 (III) SOLE LEGAL CUSTODY TO ONE OF THE PARENTS; AND

29 (2) PHYSICAL CUSTODY TO BOTH OR ONE OF THE PARENTS IN ANY
30 MANNER THAT THE COURT DETERMINES IS IN THE BEST INTEREST OF THE
31 CHILD.

1 **9-505.**

2 (A) THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE
3 PROVISIONS OF §§ 9-101, 9-101.1, AND 9-101.2 OF THIS TITLE.

4 (B) IN MAKING A DETERMINATION OF LEGAL AND PHYSICAL CUSTODY
5 UNDER THIS SUBTITLE, THE COURT SHALL GIVE PRIMARY CONSIDERATION TO
6 THE BEST INTEREST OF THE CHILD.

7 (C) IN DETERMINING THE BEST INTEREST OF THE CHILD, THE COURT
8 SHALL CONSIDER ALL RELEVANT AND APPLICABLE FACTORS, INCLUDING:

9 (1) THE FITNESS OF THE PARENTS, INCLUDING THE
10 CAPABILITIES OF EACH PARENT AND ANY CONDUCT AND CHARACTERISTICS OF
11 A PARENT THAT AFFECT THAT PARENT'S ABILITY TO CARE FOR THE CHILD OR
12 THAT MAY HAVE AN ADVERSE EFFECT ON THE CHILD;

13 (2) THE REQUESTS OF EACH PARENT AND THE SINCERITY OF
14 THEIR REQUESTS;

15 (3) ANY AGREEMENTS BETWEEN THE PARENTS;

16 (4) EACH PARENT'S ABILITY TO MAINTAIN THE CHILD'S
17 RELATIONSHIPS WITH THE OTHER PARENT, SIBLINGS, RELATIVES, AND ANY
18 OTHER PERSON WHO MAY PSYCHOLOGICALLY AFFECT THE CHILD'S BEST
19 INTEREST;

20 (5) THE CHILD'S PREFERENCE, IF THE CHILD IS OF AN AGE AND
21 INTELLIGENCE TO FORM A RATIONAL JUDGMENT;

22 (6) THE CAPACITY OF THE PARENTS TO COMMUNICATE AND TO
23 REACH SHARED DECISIONS AFFECTING THE CHILD'S WELFARE;

24 (7) THE GEOGRAPHIC PROXIMITY OF THE PARENTS' RESIDENCES
25 AND OPPORTUNITIES FOR TIME WITH EACH PARENT;

26 (8) THE LENGTH OF AND THE REASONS FOR THE CHILD'S
27 SEPARATION FROM A PARENT;

28 (9) ANY PRIOR VOLUNTARY ABANDONMENT OR SURRENDER OF
29 THE CHILD BY A PARENT;

30 (10) THE RELATIONSHIP ESTABLISHED BETWEEN THE CHILD AND
31 EACH PARENT;

1 **(11) THE ABILITY OF EACH PARENT TO MAINTAIN A STABLE AND**
2 **APPROPRIATE HOME FOR THE CHILD;**

3 **(12) THE DEMANDS OF PARENTAL EMPLOYMENT AND**
4 **OPPORTUNITIES FOR TIME WITH THE CHILD;**

5 **(13) THE WILLINGNESS OF THE PARENTS TO SHARE CUSTODY;**

6 **(14) THE POTENTIAL DISRUPTION OF THE CHILD'S SOCIAL AND**
7 **SCHOOL LIFE;**

8 **(15) ANY IMPACT ON GOVERNMENT ASSISTANCE OR BENEFITS;**

9 **(16) THE AGE, GENDER, AND HEALTH OF THE CHILD;**

10 **(17) THE AGE AND NUMBER OF CHILDREN EACH PARENT HAS IN**
11 **THE HOUSEHOLD; AND**

12 **(18) ANY OTHER CONSIDERATION THE COURT DETERMINES IS**
13 **RELEVANT TO THE BEST INTEREST OF THE CHILD.**

14 **(D) IN MAKING A DETERMINATION OF LEGAL AND PHYSICAL CUSTODY**
15 **UNDER THIS SECTION, THE COURT SHALL ARTICULATE ITS REASONS ON THE**
16 **RECORD, INCLUDING THE FACTORS CONSIDERED IN THE DETERMINATION.**

17 **9-506.**

18 **THE COURT MAY MODIFY A CUSTODY ORDER OR AGREEMENT IF:**

19 **(1) THE PARTY SEEKING A CHANGE IN THE CUSTODY ORDER OR**
20 **AGREEMENT PROVES THAT THERE HAS BEEN A MATERIAL CHANGE OF**
21 **CIRCUMSTANCES THAT AFFECTS THE WELFARE OF THE CHILD; AND**

22 **(2) THE COURT FINDS THAT MODIFICATION OF THE CUSTODY**
23 **ORDER OR AGREEMENT IS IN THE BEST INTEREST OF THE CHILD.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be
25 considered to be a material change of circumstances for purposes of modifying a child
26 custody order issued before the effective date of this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2011.