

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 459 (Delegates Alston and Vallario)
 Judiciary

Task Force to Study Joint Custody of Children

This bill establishes the Task Force to Study Joint Custody of Children. The Administrative Office of the Courts must provide staff for the task force. The task force must submit its preliminary findings to the Governor and the General Assembly by December 31, 2012. The task force must report its final findings and recommendations to the Governor and the General Assembly by December 31, 2013.

The bill takes effect July 1, 2012, and terminates June 30, 2014.

Fiscal Summary

State Effect: Given the State’s fiscal difficulties, budgets have been constrained. Thus, the requirement to staff the task force and develop the reports is not absorbable within the existing budgeted resources of the Judiciary. Instead, general fund expenditures increase by \$70,600 in FY 2013 and \$47,500 in FY 2014 in order to comply with the bill’s staffing requirements. Revenues are not affected.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	70,600	47,500	0	0	0
Net Effect	(\$70,600)	(\$47,500)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The task force must:

- study, survey, and assess (1) the advantages and disadvantages of awarding joint custody to both parents; (2) the effect of third party custody arrangements and its impact on joint custody; and (3) the role of gender in the outcome of custody cases;
- collect quantitative and qualitative data regarding joint custody in the State as compared to joint custody in other states;
- make findings about whether male parents or guardians are discriminated against in child custody cases; and
- identify possible solutions to address any possible gender discrimination in child custody cases.

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: Although the Maryland Judiciary does not keep statistics on custody outcomes, the Women’s Law Center conducted a comprehensive study of divorce and custody cases filed in Maryland in fiscal 2003. See *Families in Transition: A Follow-Up Study Exploring Family Law Issues in Maryland*. The research sample included 1,268 cases that involved custody issues. Of the total number of cases in the sample, more than half (55%) resulted in some form of joint legal custody (joint legal with physical custody to mother, joint legal with physical custody to father, and joint legal and physical custody). The report concluded that the cases in which joint legal and/or physical custody were imposed by judicial intervention resulted in more subsequent litigation than when the parties agreed to it. Specifically, when the court ordered joint legal and physical custody, or when it ordered joint legal custody and primary physical custody to the fathers, subsequent litigation rates were the highest at 19% and 27%, respectively.

A review of statutes found seven states (Florida, Idaho, Minnesota, New Mexico, Texas, West Virginia, and Wisconsin) and the District of Columbia with a presumption that joint custody is in the best interest of the child. An additional eight states (Alabama, California, Connecticut, Mississippi, Nevada, New Hampshire, Tennessee, and Vermont) have a presumption that joint custody is in the best interest of the child only if the parents agree. Two states (Maine and Michigan) require courts to award joint custody if the parents agree to it. Sixteen states (Alabama, Alaska, Arizona, Arkansas, California,

Florida, Hawaii, Idaho, Iowa, Louisiana, Minnesota, Mississippi, Nevada, Oklahoma, Oregon, and Wisconsin) and the District of Columbia have rebuttable presumptions that joint custody is not in the best interest of the child if there have been allegations of domestic violence. Finally, two states (Texas and Washington) prohibit courts from awarding joint custody if there is a history of domestic violence.

State Fiscal Effect: General fund expenditures increase by \$70,600 in fiscal 2013 and by \$47,500 in fiscal 2014 for contractual costs associated with staffing the meetings and gathering the required data in order to complete the reports. This estimate assumes that the Judiciary will absorb any additional expenditures related to reimbursements for the task force members and the preparation and distribution of materials to be used during task force meetings.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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