

HOUSE BILL 1328

D4
HB 1032/18 – JUD

0lr2340

By: **Delegates Dumais and Atterbeary**
Introduced and read first time: February 7, 2020
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Child Custody – Legal Decision Making and Parenting Time**

3 FOR the purpose of repealing references to the terms “child custody” and “visitation” in
4 certain instances and substituting the terms “legal decision making” and “parenting
5 time” in certain instances; authorizing the court, in determining certain legal
6 decision making authority and parenting time in certain child custody proceedings,
7 to consider certain factors; requiring the court to articulate certain findings of fact
8 on the record; authorizing the court to award joint legal decision making to both
9 parties under certain circumstances; prohibiting a party from unilaterally making
10 certain decisions concerning a child without agreement of the other party or order of
11 the court under certain circumstances; authorizing the court to modify a child
12 custody or visitation order or a legal decision making or parenting time order under
13 certain circumstances; specifying that a party’s proposal to relocate the residence of
14 the party or the child in a certain manner constitutes a material change in
15 circumstances for purposes of a modification of an order; specifying the purposes of
16 this Act; repealing certain provisions relating to the relevancy of a disability of a
17 party in a child custody or visitation proceeding; making certain clarifying and
18 conforming changes; defining certain terms; and generally relating to child custody,
19 visitation, legal decision making, and parenting time.

20 BY repealing
21 Article – Family Law
22 Section 5–203(d) and 9–107
23 Annotated Code of Maryland
24 (2019 Replacement Volume)

25 BY adding to
26 Article – Family Law
27 Section 9–101 and 9–103 to be under the amended subtitle “Subtitle 1. Definitions;
28 General Provisions” and the amended title “Title 9. Custodial Arrangements
29 for Children”; and 9–201 through 9–204 to be under the new subtitle “Subtitle

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



2. Legal Decision Making and Parental Responsibility – Judicial
Determinations”
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Family Law
Section 9–101, 9–101.1, 9–101.2, 9–103, 9–104, 9–105, 9–106, and 9–108
Annotated Code of Maryland
(2019 Replacement Volume)

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

Article – Family Law

5–203.

[(d) (1) If the parents live apart, a court may award custody of a minor child to
either parent or joint custody to both parents.

(2) Neither parent is presumed to have any right to custody that is superior
to the right of the other parent.]

Title 9. [Child Custody and Visitation] **CUSTODIAL ARRANGEMENTS FOR CHILDREN.**

Subtitle 1. [In General] **DEFINITIONS; GENERAL PROVISIONS.**

9–101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(B) “CHILD” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS.

(C) (1) “LEGAL DECISION MAKING” MEANS THE RIGHT AND OBLIGATION
TO MAKE MAJOR LONG–TERM DECISIONS INVOLVING MEDICAL CARE, MENTAL
HEALTH, EDUCATION, RELIGIOUS TRAINING, EXTRACURRICULAR ACTIVITIES, AND
OTHER MATTERS OF MAJOR SIGNIFICANCE CONCERNING THE CHILD’S LIFE AND
WELFARE.

(2) “LEGAL DECISION MAKING” IS ALSO KNOWN AS LEGAL CUSTODY.

(D) (1) “PARENTING TIME” MEANS:

(I) THE TIME THE CHILD IS IN A PARENT'S CARE ACCORDING TO AN AGREEMENT OR A COURT-ORDERED SCHEDULE; AND

(II) THE RIGHT AND OBLIGATION OF A PARENT TO PROVIDE A HOME FOR THE CHILD, ADDRESS THE CHILD'S NEEDS, AND MAKE THE DAY-TO-DAY DECISIONS REQUIRED DURING THE TIME THE CHILD IS WITH THAT PARENT.

(2) "PARENTING TIME" IS ALSO KNOWN AS PHYSICAL CUSTODY, VISITATION, OR ACCESS.

9-103.

(A) IF THE PARENTS LIVE APART, A COURT MAY AWARD LEGAL DECISION MAKING OR PARENTING TIME TO EITHER PARENT OR JOINTLY TO BOTH PARENTS.

(B) NEITHER PARENT IS PRESUMED TO HAVE ANY RIGHT TO LEGAL DECISION MAKING OR PARENTING TIME THAT IS SUPERIOR TO THE RIGHT OF THE OTHER PARENT.

[9-101.] 9-104.

(a) In any [custody or visitation] LEGAL DECISION MAKING OR PARENTING TIME proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if [custody or visitation] LEGAL DECISION MAKING OR PARENTING TIME rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny [custody or visitation] LEGAL DECISION MAKING OR PARENTING TIME rights to that party, except that the court may approve a supervised [visitation] PARENTING TIME arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

[9-101.1.] 9-105.

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

(b) In a [custody or visitation] LEGAL DECISION MAKING OR PARENTING TIME proceeding, the court shall consider[, when deciding custody or visitation issues,] evidence of abuse by a party against:

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

(2) the party's spouse; or

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

(c) If the court finds that a party has committed abuse against the other parent of the party's child, the party's spouse, or any child residing within the party's household, the court shall make arrangements for [custody or visitation] **LEGAL DECISION MAKING OR PARENTING TIME** that best protect:

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

(2) the victim of the abuse.

[9-101.2.] 9-106.

(a) Except as provided in subsection (b) of this section, unless good cause for the award of [custody or visitation] **LEGAL DECISION MAKING OR PARENTING TIME** is shown by clear and convincing evidence, a court may not award [custody of a child or visitation with a child] **LEGAL DECISION MAKING OR PARENTING TIME**:

(1) to a parent who has been found by a court of this State to be guilty of first degree or second degree murder of the other parent of the child, another child of the parent, or any family member residing in the household of either parent of the child; or

(2) to a parent who has been found by a court of any state or of the United States to be guilty of a crime that, if committed in this State, would be first degree murder or second degree murder of the other parent of the child, another child of the parent, or any family member residing in the household of either parent of the child.

(b) If it is in the best interest of the child, the court may approve a supervised [visitation] **PARENTING TIME** arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

[9-103.] 9-107.

(a) A child who is 16 years old or older and who is subject to a custody order or decree **OR A LEGAL DECISION MAKING OR PARENTING TIME ORDER OR DECREE** may file a petition to change custody **OR LEGAL DECISION MAKING OR PARENTING TIME**.

(b) A petitioner under this section may file the proceeding in the petitioner's own name and need not proceed by guardian or next friend.

(c) Notwithstanding any other provision of this article, if a petitioner under this section petitions a court to amend a custody order or decree **OR A LEGAL DECISION MAKING OR PARENTING TIME ORDER OR DECREE**, the court:

(1) shall hold a hearing; and

(2) may amend the order or decree and [place the child in the custody of] **GRANT LEGAL DECISION MAKING OR PARENTING TIME TO** the parent designated by the child.

[9-104.] 9-108.

Unless otherwise ordered by a court, access to medical, dental, and educational records concerning the child may not be denied to a parent [because the parent does not have physical custody of the child].

[9-105.] 9-109.

[In any custody or visitation proceeding, if] **IF** the court determines that a party to a custody or visitation order **OR LEGAL DECISION MAKING OR PARENTING TIME ORDER** has unjustifiably denied or interfered with [visitation] **THE RIGHTS** granted by [a custody or visitation] **THE** order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:

(1) order that the [visitation] **PARENTING TIME** be rescheduled;

(2) modify the custody or visitation **OR LEGAL DECISION MAKING OR PARENTING TIME** order to require additional terms or conditions designed to ensure future compliance with the order; or

(3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with [visitation] **PARENTING TIME** rights.

[9-106.] 9-110.

(a) (1) Except as provided in subsection (b) of this section, in any [custody or visitation] **LEGAL DECISION MAKING OR PARENTING TIME** proceeding the court [may] **SHALL** include as a condition of a [custody or visitation] **LEGAL DECISION MAKING OR PARENTING TIME** order a requirement that either party provide advance written notice of at least 90 days to the court, the other party, or both, of the intent to relocate the permanent residence of the party or the child either within or outside the State.

(2) The court may prescribe the form and content of the notice requirement.

(3) If the court orders that notice be given to the other party, a mailing of the notice by certified mail, return receipt requested, to the last known address of the other party shall be deemed sufficient to comply with the notice requirement.

(4) If either party files a petition regarding a proposed relocation within 20 days of the written notice of the relocation required by paragraph (1) of this subsection, the court shall set a hearing on the petition on an expedited basis.

(b) On a showing that notice would expose the child or either party to abuse as defined in § 4–501 of this article or for any other good cause the court shall waive the notice required by this section.

(c) If either party is required to relocate in less than the 90–day period specified in the notice requirement, the court may consider as a defense to any action brought for a violation of the notice requirement that:

(1) relocation was necessary due to financial or other extenuating circumstances; and

(2) the required notice was given within a reasonable time after learning of the necessity to relocate.

(d) The court may consider any violation of the notice requirement as a factor in determining the merits of any subsequent proceeding involving [custody or visitation] **LEGAL DECISION MAKING OR PARENTING TIME.**

[9–107.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) “Disability” means:

1. a physical or mental impairment that substantially limits one or more of an individual’s major life activities;

2. a record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or

3. being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(ii) “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.L. 110–325.

(3) “Supportive parenting services” means services that may assist an individual with a disability in the effective use of techniques and methods to enable the individual to discharge the individual’s responsibilities to a child as successfully as an individual who does not have a disability, including nonvisual techniques for individuals who are blind.

(b) (1) In any custody or visitation proceeding, the disability of a party is

relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

(2) The party alleging that the disability of the other party affects the best interest of the child bears the burden of proving that the disability of the other party affects the best interest of the child.

(3) If the burden of proof is met, the party who has a disability shall have the opportunity to prove that supportive parenting services would prevent a finding that the disability affects the best interest of the child.

(4) If the court finds that the disability of a party affects the best interest of the child and denies or limits custody or visitation, the court shall specifically state in writing:

(i) the basis for the finding; and

(ii) the reason that the provision of supportive parenting services is not a reasonable accommodation to prevent the finding.]

[9–108.] **9–111.**

(a) In this section:

(1) “deployment” means compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other Reserve component to report for combat operations or other active service for which the member is required to report unaccompanied by any family member or that is classified by the member’s branch as remote; and

(2) “deployment” does not include National Guard or Reserve annual training, inactive duty days, or drill weekends.

(b) Any order or modification of an existing child custody or visitation order **OR LEGAL DECISION MAKING OR PARENTING TIME ORDER** issued by a court during a term of a deployment of a parent shall specifically reference the deployment of the parent.

(c) (1) A parent who petitions the court for an order or modification of an existing child custody or visitation order **OR LEGAL DECISION MAKING OR PARENTING TIME ORDER** after returning from a deployment shall specifically reference the date of the end of the deployment in the petition.

(2) (i) If the petition under paragraph (1) of this subsection is filed within 30 days after the end of the deployment of the parent, the court shall set a hearing on the petition on an expedited basis.

(ii) If the court finds that extenuating circumstances prohibited the filing of the petition within 30 days after the end of the deployment of the parent, the court may set a hearing on the petition on an expedited basis whenever the petition is filed.

(d) Any [custody or visitation] **LEGAL DECISION MAKING OR PARENTING TIME** order issued based on the deployment of a parent shall require that:

(1) the other parent reasonably accommodate the leave schedule of the parent who is subject to the deployment;

(2) the other parent facilitate opportunities for telephone and electronic mail contact between the parent who is subject to the deployment and the child during the period of deployment; and

(3) the parent who is subject to the deployment provide timely information regarding the parent's leave schedule to the other parent.

**SUBTITLE 2. LEGAL DECISION MAKING AND PARENTAL RESPONSIBILITY –
JUDICIAL DETERMINATIONS.**

9–201.

THE PURPOSES OF THIS SUBTITLE ARE TO:

**(1) PROMOTE STABILITY AND LONG-TERM HEALTH AND WELFARE
FOR CHILDREN BY:**

**(I) ENSURING THAT CHILDREN HAVE FREQUENT, REGULAR,
CONTINUING, AND EXTENDED CONTACT WITH PARENTS WHO HAVE THE ABILITY TO
ACT IN THE BEST INTEREST OF THEIR CHILDREN;**

**(II) CREATING FAMILY AND CASE-SPECIFIC PARENTING TIME
SCHEDULES FOR DAY-TO-DAY ACCESS, SHARED HOLIDAYS, VACATIONS, CULTURAL
OR RELIGIOUS EVENTS, AND PARTICIPATION IN SPECIAL OCCASIONS WITH THE
EXTENDED FAMILY OF EITHER PARENT;**

**(III) ENCOURAGING PARENTS TO SHARE IN THE RIGHTS AND
RESPONSIBILITIES OF RAISING THEIR CHILDREN WHEN THE PARENTS DO NOT
RESIDE TOGETHER; AND**

**(IV) FOSTERING CHILDREN'S RELATIONSHIPS WITH SIBLINGS
AND WITH SIGNIFICANT ADULTS IN THE CHILDREN'S LIVES;**

**(2) PROVIDE CHILDREN WITH PHYSICAL AND EMOTIONAL SECURITY
AND PROTECTION FROM EXPOSURE TO CONFLICT AND VIOLENCE; AND**

(3) PROVIDE FOR AN EXPEDITIOUS, THOUGHTFUL, AND CONSISTENT PROCESS FOR DECISION MAKING BY COURTS TO PROTECT THE BEST INTEREST OF CHILDREN.

9-202.

(A) SUBJECT TO THE PROVISIONS OF §§ 9-104, 9-105, AND 9-106 OF THIS TITLE, IN DETERMINING WHAT LEGAL DECISION MAKING AUTHORITY AND PARENTING TIME IS IN THE BEST INTEREST OF THE CHILD, THE COURT MAY CONSIDER THE FOLLOWING FACTORS:

(1) STABILITY AND THE FORESEEABLE HEALTH AND WELFARE OF THE CHILD;

(2) FREQUENT, REGULAR, AND CONTINUING CONTACT WITH PARTIES WHO CAN ACT IN THE CHILD'S BEST INTEREST;

(3) WHETHER AND HOW PARTIES WHO DO NOT LIVE TOGETHER WILL SHARE THE RIGHTS AND RESPONSIBILITIES OF RAISING THE CHILD;

(4) THE CHILD'S RELATIONSHIP WITH EACH PARTY, ANY SIBLINGS, OTHER RELATIVES, AND INDIVIDUALS WHO ARE OR MAY BECOME IMPORTANT IN THE CHILD'S LIFE;

(5) THE CHILD'S PHYSICAL AND EMOTIONAL SECURITY AND PROTECTION FROM CONFLICT AND VIOLENCE;

(6) THE CHILD'S DEVELOPMENTAL NEEDS, INCLUDING PHYSICAL SAFETY, EMOTIONAL SECURITY, POSITIVE SELF-IMAGE, INTERPERSONAL SKILLS, AND INTELLECTUAL AND COGNITIVE GROWTH;

(7) THE DAY-TO-DAY NEEDS OF THE CHILD, INCLUDING EDUCATION, SOCIALIZATION, CULTURE AND RELIGION, FOOD, SHELTER, CLOTHING, AND MENTAL AND PHYSICAL HEALTH;

(8) HOW TO:

(I) PLACE THE CHILD'S NEEDS ABOVE THE PARTIES' NEEDS;

(II) PROTECT THE CHILD FROM THE NEGATIVE EFFECTS OF ANY CONFLICT BETWEEN THE PARTIES; AND

(III) MAINTAIN THE CHILD'S RELATIONSHIP WITH THE PARTIES, SIBLINGS, OTHER RELATIVES, OR OTHER INDIVIDUALS WHO HAVE OR LIKELY MAY HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;

(9) THE AGE OF THE CHILD;

(10) ANY MILITARY DEPLOYMENT OF A PARTY AND ITS EFFECT, IF ANY, ON THE PARENT-CHILD RELATIONSHIP;

(11) ANY PRIOR COURT ORDERS OR AGREEMENTS;

(12) EACH PARTY'S ROLE AND TASKS RELATED TO THE CHILD AND HOW, IF AT ALL, THOSE ROLES AND TASKS HAVE CHANGED;

(13) THE LOCATION OF EACH PARTY'S HOME AS IT RELATES TO THEIR ABILITY TO COORDINATE PARENTING TIME, SCHOOL, AND ACTIVITIES;

(14) THE PARTIES' RELATIONSHIP WITH EACH OTHER, INCLUDING:

(I) HOW THEY COMMUNICATE WITH EACH OTHER;

(II) WHETHER THEY CAN CO-PARENT WITHOUT DISRUPTING THE CHILD'S SOCIAL AND SCHOOL LIFE; AND

(III) HOW THE PARTIES WILL RESOLVE ANY DISPUTES IN THE FUTURE WITHOUT THE NEED FOR COURT INTERVENTION;

(15) THE CHILD'S PREFERENCE, IF AGE-APPROPRIATE; AND

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

(B) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE RECORD, INCLUDING:

(1) THE CONSIDERATION OF EACH FACTOR LISTED IN SUBSECTION (A) OF THIS SECTION;

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

(3) THE WEIGHT THE COURT GAVE TO EACH FACTOR THAT THE COURT

1 **CONSIDERED.**

2 **9-203.**

3 **(A) IF THE COURT DETERMINES THAT THE PARTIES ARE ABLE TO**
4 **COMMUNICATE AND REACH JOINT DECISIONS CONCERNING SOME OR ALL OF THE**
5 **CHILD'S NEEDS DESCRIBED IN § 9-202(A) OF THIS SUBTITLE, THE COURT MAY**
6 **AWARD:**

7 **(1) JOINT LEGAL DECISION MAKING TO BOTH PARTIES;**

8 **(2) JOINT LEGAL DECISION MAKING TO BOTH PARTIES, DESIGNATING**
9 **ONE PARTY TO MAKE FINAL DECISIONS IF THE PARTIES ARE UNABLE TO AGREE**
10 **AFTER A THOROUGH DISCUSSION OF THE ISSUES; OR**

11 **(3) JOINT LEGAL DECISION MAKING TO BOTH PARTIES, ALLOCATING**
12 **RESPONSIBILITY FOR SPECIFIC ISSUES TO EACH PARTY, IF THE PARTIES ARE**
13 **UNABLE TO AGREE AFTER A THOROUGH DISCUSSION OF THE ISSUES.**

14 **(B) IF THE COURT AWARDS JOINT LEGAL DECISION MAKING AUTHORITY**
15 **UNDER SUBSECTION (A)(1) OF THIS SECTION, NEITHER PARTY, WITHOUT**
16 **AGREEMENT OF THE OTHER PARTY OR ORDER OF THE COURT, MAY UNILATERALLY**
17 **MAKE DECISIONS INVOLVING THE CHILD'S HEALTH, EDUCATION, RELIGION,**
18 **CULTURE, OR MEDICAL CARE OR ANY OTHER MATTER OF MAJOR SIGNIFICANCE**
19 **CONCERNING THE CHILD'S LIFE OR WELFARE.**

20 **9-204.**

21 **(A) THE COURT MAY MODIFY, IN ACCORDANCE WITH THE PROVISIONS OF**
22 **THIS SUBTITLE, A CHILD CUSTODY OR VISITATION ORDER OR A LEGAL DECISION**
23 **MAKING OR PARENTING TIME ORDER IF THE COURT DETERMINES THAT THERE HAS**
24 **BEEN A MATERIAL CHANGE IN CIRCUMSTANCES SINCE THE ISSUANCE OF THE**
25 **ORDER THAT RELATES TO THE NEEDS OF THE CHILD OR THE ABILITY OF THE**
26 **PARTIES TO MEET THOSE NEEDS.**

27 **(B) A PARTY'S PROPOSAL TO RELOCATE THE RESIDENCE OF THE PARTY OR**
28 **THE CHILD IN A WAY THAT WOULD CAUSE PARENTING TIME TO BE IMPRACTICABLE**
29 **CONSTITUTES A MATERIAL CHANGE IN CIRCUMSTANCES.**

30 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
31 **October 1, 2020.**