Factors to Consider in Determining and Modifying Child Custody and Access Schedules:

How Legislation HB1191 Changes Law Practice

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Hon. Cathy Hollenberg Serrette, (Sr.)

Chapter 486 **(House Bill 1191)**

AN ACT concerning

Family Law – Child Custody – Determinations

FOR the purpose of authorizing the court, in determining legal and physical custody in certain child custody proceedings, to consider certain factors; authorizing the court to modify a child custody or visitation order under certain circumstances; and generally relating to child custody and visitation.

BY repealing and reenacting, without amendments,
Article – Family Law
Section 9–101, 9–101.1, and 9–101.2
Annotated Code of Maryland
(2019 Replacement Volume and 2024 Supplement)

BY adding to
Article – Family Law
Section 9–201 and 9–202 to be under the new subtitle "Subtitle 2. Legal and Physical Custody – Judicial Determinations"
Annotated Code of Maryland
(2019 Replacement Volume and 2024 Supplement)

Article – Family Law

9–101.

(a) In any custody or visitation 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 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 rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well–being of the child.

9–101.1.

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

(b)In a custody or visitation 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 that best protect:

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

(2) the victim of the abuse.

9–101.2.

(a) Except as provided in subsection (b) of this section, unless good cause for the award of custody or visitation is shown by clear and convincing evidence, a court may not award custody of a child or visitation with a child:

(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 arrangement that assures the safety and the physiological, psychological, and emotional well–being of the child.

SUBTITLE 2. LEGAL AND PHYSICAL CUSTODY – JUDICIAL DETERMINATIONS.

9–201.

(A) SUBJECT TO THE PROVISIONS OF §§ 9–101, 9–101.1, AND 9–101.2 OF THIS TITLE, IN DETERMINING WHAT LEGAL CUSTODY AND PHYSICAL CUSTODY IS IN THE BEST INTEREST OF A 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 PARENTS WHO CAN ACT IN THE CHILD'S BEST INTEREST;

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

(4) THE CHILD'S RELATIONSHIP WITH EACH PARENT, 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 EXPOSURE TO 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 PARENTS' NEEDS;

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

(II) MAINTAIN THE CHILD'S RELATIONSHIP WITH THE PARENTS, 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 PARENT AND ITS EFFECT, IF ANY, ON THE PARENT–CHILD RELATIONSHIP;

(11) ANY PRIOR COURT ORDERS OR AGREEMENTS;

(12) EACH PARENT'S ROLE AND TASKS RELATED TO THE CHILD AND

HOW, IF AT ALL, THOSE ROLES AND TASKS HAVE CHANGED;

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

(14) THE PARENTS' 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 PARENTS 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 BEST TO SERVE THE PHYSICAL, DEVELOPMENTAL, AND EMOTIONAL NEEDS OF THE CHILD.

(B) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE RECORD OR IN A WRITTEN OPINION, INCLUDING THE CONSIDERATION OF EACH FACTOR LISTED IN SUBSECTION (A) OF THIS SECTION AND ANY OTHER FACTOR THAT THE COURT CONSIDERED.

9–202.

(A) THE COURT MAY MODIFY, IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE, A CHILD CUSTODY OR VISITATION ORDER IF THE COURT DETERMINES THAT THERE HAS BEEN A MATERIAL CHANGE IN CIRCUMSTANCES SINCE THE ISSUANCE OF THE ORDER THAT RELATES TO THE NEEDS OF THE CHILD OR THE ABILITY OF THE PARENTS TO MEET THOSE NEEDS AND THAT MODIFYING THE ORDER IS IN THE BEST INTEREST OF THE CHILD.

(B) A PARENT'S PROPOSAL TO RELOCATE THE RESIDENCE OF THE PARENT OR THE CHILD IN A WAY THAT WOULD CAUSE PHYSICAL CUSTODY TO BE IMPRACTICABLE CONSTITUTES A MATERIAL CHANGE IN CIRCUMSTANCES.

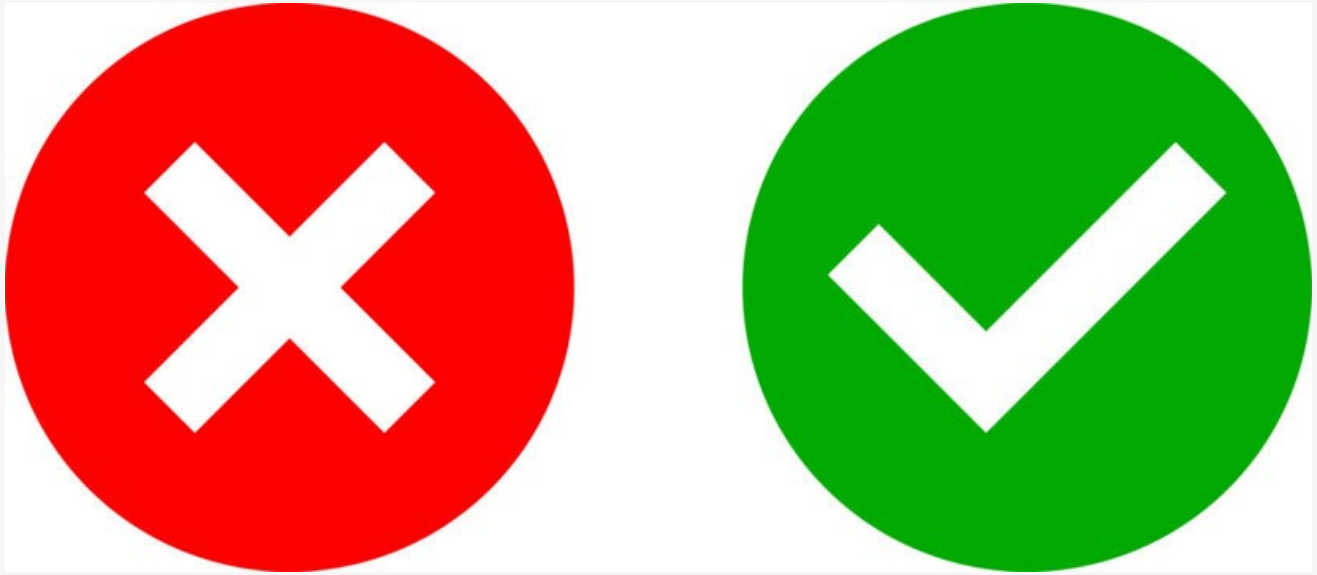
SECTION 2. AND BE IT FURTHER ENACTED, THAT THIS ACT SHALL TAKE EFFECT OCTOBER 1, 2025.

Approved by the Governor, May 13, 2025.

Prior to October 1, 2025

Case law determined the factors

Montgomery County v. Sanders, 38 Md. App. 406 (1978) and *Taylor v. Taylor*, 306 Md. 290, 508 (1986)

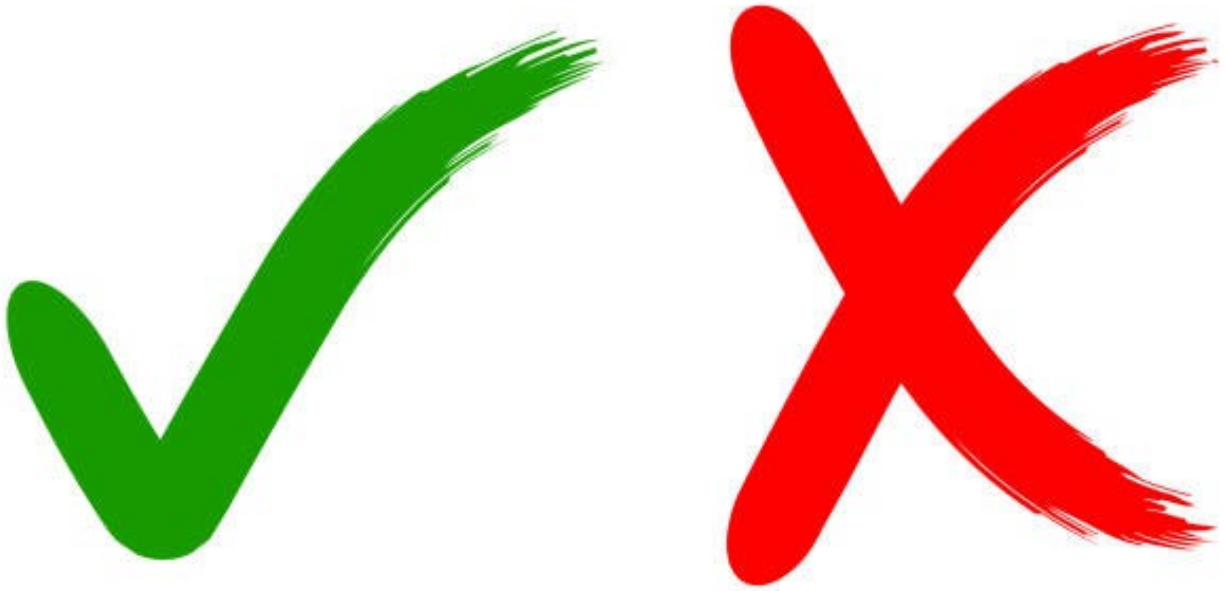


Montgomery County v. Sanders Factors

- Religion
- Adultery
- Child's desires
- Material advantages
- Character and reputation
- Desire of natural parents
- Agreements between the Potential of maintaining natural family
- Preference of child
- Material opportunities
- Age, health, and sex of the child
- Residences of parents and visitation
- Length of separation from natural parents
- Prior voluntary abandonment or surrender

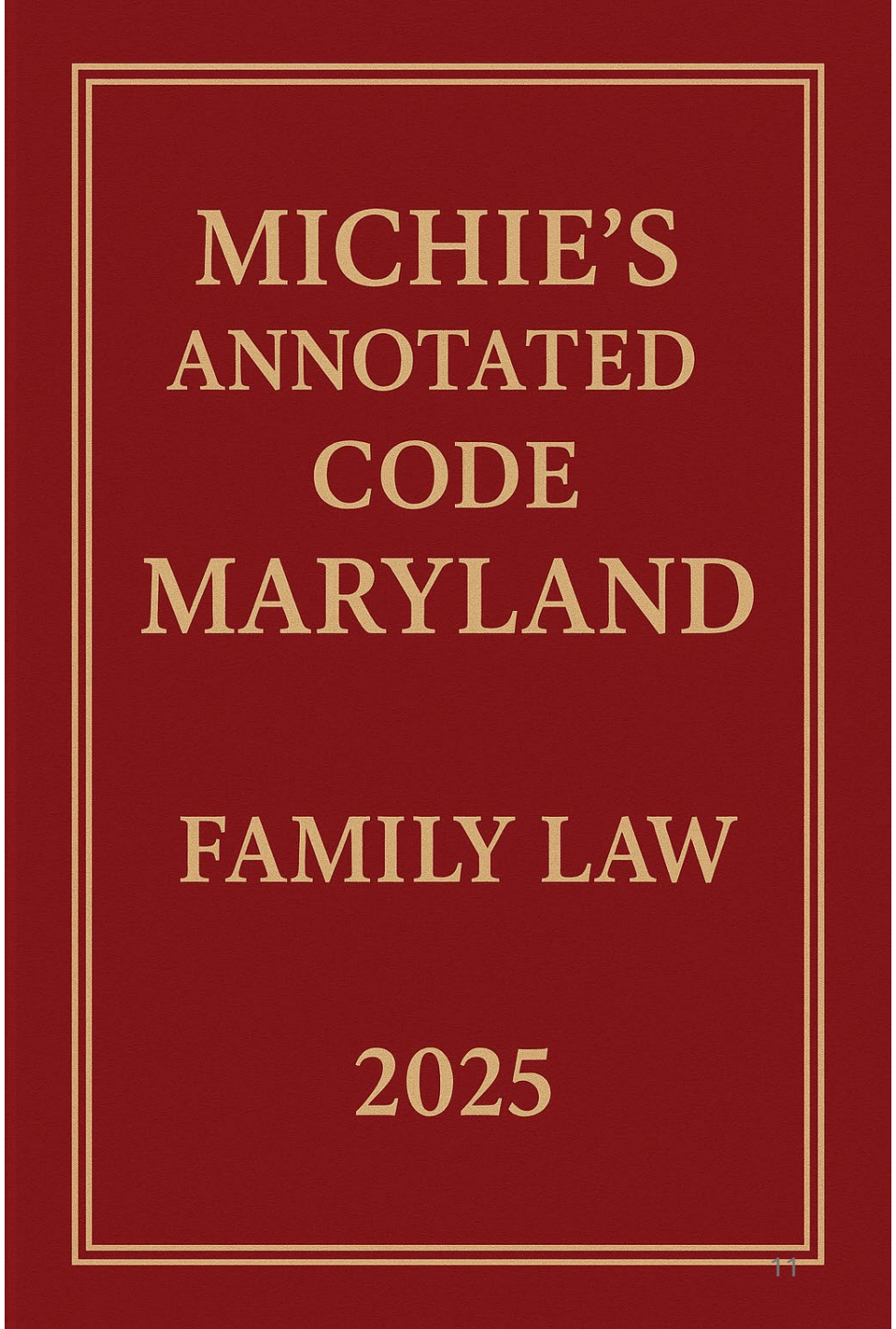
Taylor v. Taylor Factors

- (1) Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child's Welfare
- (2) Willingness of Parents to Share Custody
- (3) Fitness of Parents
- (4) Relationship Established Between the Child and Each Parent
- (5) Preference of the Child
- (6) Potential Disruption of Child's Social and School Life
- (7) Geographic Proximity of Parental Homes
- (8) Demands of Parental Employment
- (9) Age and Number of Children
- (10) Sincerity of Parents' Request
- (11) Financial Status of the Parents
- (12) Impact on State or Federal Assistance



INTRODUCTION TO THE NEW STATUTE

Fam. Law Art., Sec. 9-201



Still a Best Interests standard

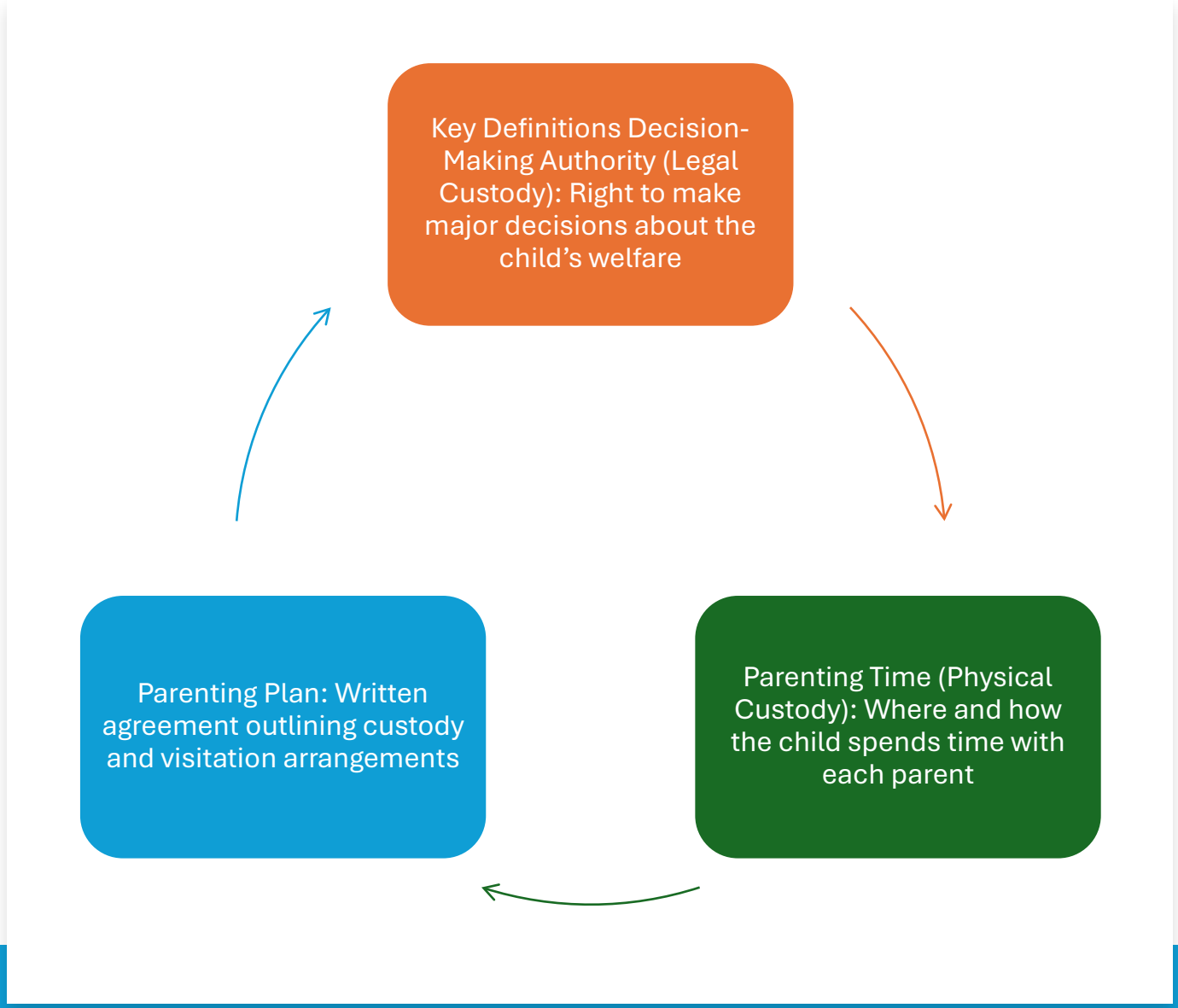
- Emphasis on the "best interest of the child" standard as paramount
- Recent updates effective October 1, 2025, incorporating modernized, child-centered factors

Best Interest Factors

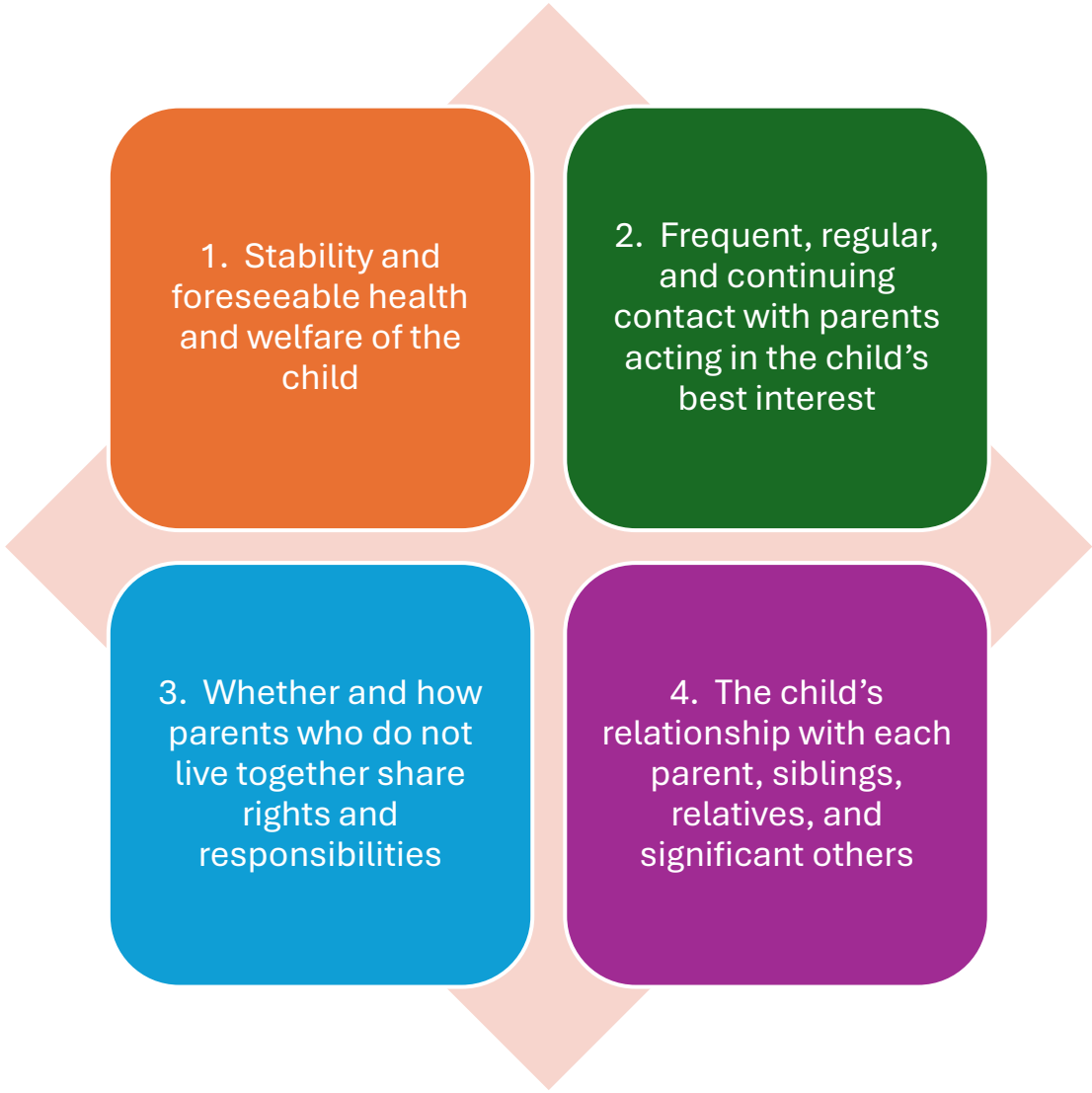
- **2025 Maryland Laws Ch. 483 (H.B. 1191 and SB 548) (Codified Best Interest Factors effective October 1, 2025)**

- This bill establishes statutory factors courts may consider in determining what legal custody and physical custody is in the best interest of a child. The court must articulate its findings of fact on the record or in a written opinion, including the consideration of each factor specified in the bill and any other factor that the court considered. The bill also authorizes a court to modify a child custody or visitation order if the court determines that there has been a material change in circumstances since the issuance of the order, as specified.

Maryland Rule 9-204.1



Comprehensive List of Custody Factors (Md. Code, Family Law § 9-201)



Custody Factors Continued

5. The child's physical and emotional security and protection from conflict and violence

6. The child's developmental needs: safety, emotional security, self-image, interpersonal skills, intellectual growth

7. Day-to-day needs: education, socialization, culture, religion, food, shelter, clothing, health

8. Prioritizing the child's needs above parental conflict, protecting the child from negative effects of conflict and maintaining important relationships

Custody Factors Continued

9. The child's age

10. Impact of any military deployment of a parent

11. Any prior court orders or agreements

12. Each parent's role and how those roles have changed

13. Geographic location of each parent's home relative to coordinating parenting time and activities

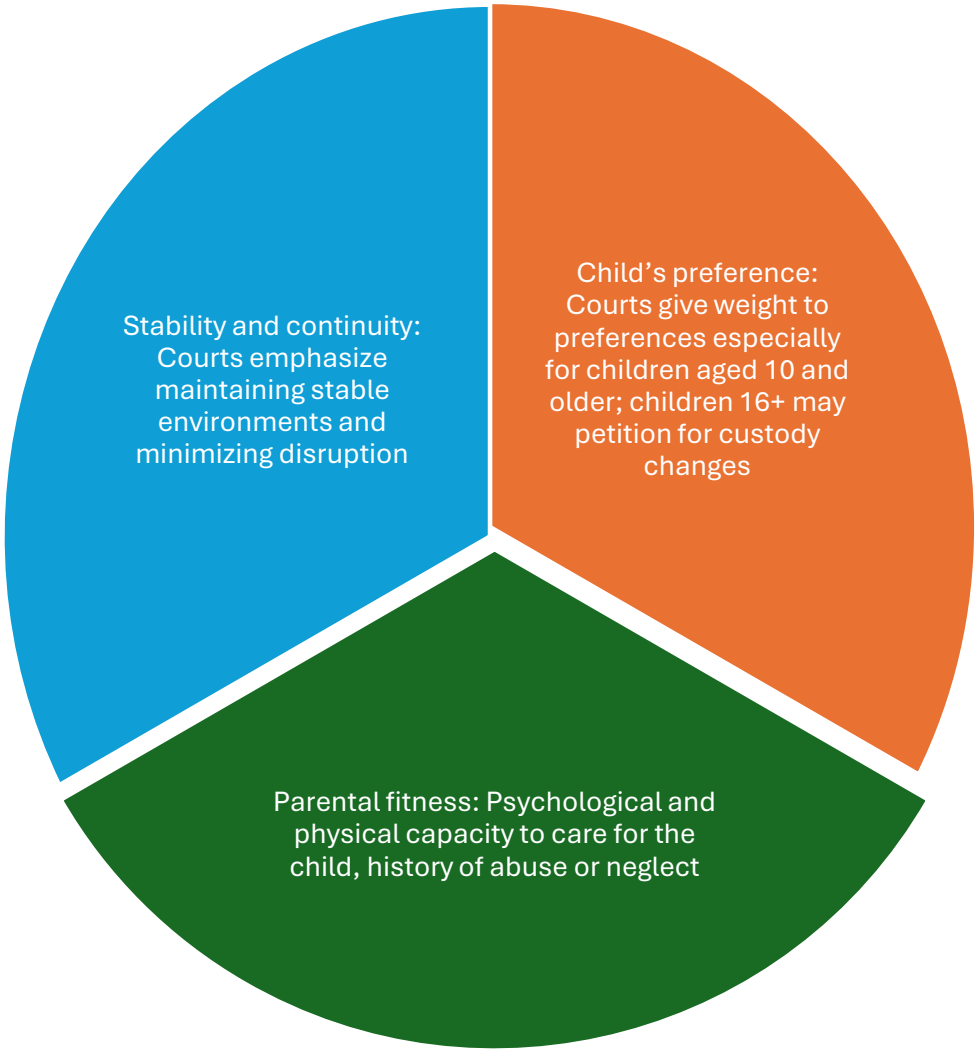
Custody Factors Continued

14. Parents' relationship with each other: communication, co-parenting ability, dispute resolution without court intervention

15. The child's preference, if age-appropriate

16. Any other factor the court considers appropriate to serve the child's physical, developmental, and emotional needs

More Factors to Consider



..... And More

Financial resources and material opportunities: Ability to provide for the child's needs

Prior abandonment or surrender of custody: History of walking out or leaving child care responsibilities

Ability to maintain family relationships: Ensuring contact with siblings, extended family, and significant others

CONCLUSION

- The updated factors reflect a holistic, child-centered approach
- Emphasis on stability, safety, emotional well-being, and practical parenting cooperation
- Courts balance multiple factors; no single factor is determinative
- Aim to serve the best interests of the child in all custody determinations
- Earlier case law factors still relevant as other appropriate factors

How HB1191 Can Meet the Best Interests of Children and Support Healthy Parenting and Cooperative Co-Parenting

National *Family* *Resiliency* Center

- Defines child-focused approach for parents to work together.
- Defines factors that help children grow and thrive.
- Stresses importance of shared parenting responsibilities.
- Defines how children's needs come before parents' needs.
- Provides specific steps parents can take to demonstrate healthy, child-focused parenting.
- Provides framework to support parents who may have mental health disorders while meeting needs of children.

- Provides child-centered factors for all disciplines to use.
- Assists lawyers and mental health professionals in providing more specific information related to children's and parents' functioning, including mental health.
- Helps professionals to have a common denominator to determine how mental health and personality disorders need to be addressed.
- Encourages an ethical approach to address the mental health needs and challenges of clients.

Important Terms from HB 1191

- Parents sharing rights and responsibilities of children
- Child's physical and emotional security and protection from exposure to conflict and violence
- Prioritize the needs of children over those of parents
- How parents communicate with each other, co-parent without disrupting children's social and school life
- How parents will resolve disputes outside of court intervention

Child's Developmental Needs

- Physical, safety, emotional security, positive self-image, people skills, and intellectual and cognitive growth
- Day to day needs of child-education, socialization, culture/religion, food, shelter clothing, and mental and physical health

Action Plan: What We Can Do

What Can We Do to Address Family Challenges and Meet the Best Interests of Children

Help parents behaviorally define:

- Begin work with families as soon as possible
- How parents will work together to address children's specific needs.
- How parents will prioritize children's needs over their own.
- How parents will share responsibilities in a timely way.

Promote Accountability

- Dates to have tasks completed, communication from helping professionals regarding health/well-being of parent.
- Understanding that helping client address mental health challenges will promote long-term health parent-child and co-parent relationships.
- Have a working plan for parents that goes beyond a piece of paper when professionals are finished with their work.

When There is a Mental Health Disorder

- Move away from overnights to how this parent can become healthier and spend child-appropriate time with child in a way that ensures child's safety.
- With common denominator of child-focused factors and co-parenting behaviors, help define what each professional can do to promote responsible parenting.
- Communicate with mental health professionals.
- Be honest with client.
- Assist in locating appropriate resources.
- Develop plan that include objectives for parents to meet.

Bring home innovative ideas to address mental health and personality disorders that respect parents and protect needs of children

Can you zealously advocate for your client and the rest of your client's family?

Can you have honest, difficult conversations with your client who may be diagnosed with a mental health or personality disorder?

Can you collaborate with the interdisciplinary professionals trying to help this family move forward in healthier ways?

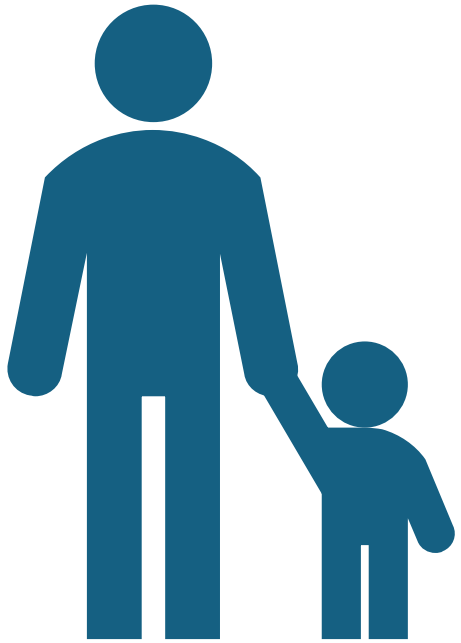
Statutory Cites for HB 1191

§ 9-201. Factors for determining child custody and visitation; findings of fact

§ 9-202. Modification of child custody or visitation order

MD RULE 9-204.1. PARENTING PLANS

- At the parties' first appearance in court on a decision-making authority or parenting time matter, the court shall provide to each party a paper copy of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Tool and direct them to an electronic version of these documents. The court shall advise the parties that they may work separately, together, or with a mediator to develop a parenting plan they believe is in the best interest of their child.



MD Rule 9-204.1(c)

<u>Best Interest of the Child:</u>

In determining what decision-making authority and parenting time arrangement is in the best interest of the child, the parties may consider the following factors:

<u>ALL THE FACTORS IN HB 1191/F.L. 9-201</u>

MD Code, F.L. § 9-107: Disability of party to custody or visitation proceedings

- 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.
- 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.
- 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.

MD R FAM LAW ACT Rule 9-204: Educational seminars

Topics shall include:

- (1) the emotional impact of divorce on children and parents;
- (2) developmental stages of children and the effects of divorce on children at different stages;
- (3) changes in the parent-child relationship;
- (4) discipline;
- (5) transitions between households;
- (6) skill-building in
- (A) parental communication with children and with each other,
- (B) explaining divorce to children,
- (C) problem-solving and decision-making techniques,
- (D) conflict resolution,
- (E) coping strategies,
- (F) helping children adjust to family changes,
- (G) avoiding inappropriate interactions with the children, and
- (H) use of the Maryland Parenting Plan Tool and development of a parenting plan; and
- (7) resources available in cases of domestic violence, child abuse, and neglect

RULE 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

- Promptly after an action subject to this Rule is at issue, the court shall determine whether:
- (A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child; and
- (B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

RULE 9-205.1. APPOINTMENT OF CHILD'S ATTORNEY

Appointment may be most appropriate in cases involving the following factors, allegations, or concerns:

- (1) request of one or both parties;
- (2) high level of conflict;
- (3) inappropriate adult influence or manipulation;
- (4) past or current child abuse or neglect;
- (5) past or current mental health problems of the child or party;
- (6) special physical, educational, or mental health needs of the child that require investigation or advocacy;
- (7) actual or threatened family violence;
- (8) alcohol or other substance abuse;
- (9) consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;
- (10) relocation that substantially reduces the child's time with a parent, sibling, or both; or
- (11) any other factor that the court considers relevant.

RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

“Assessment” includes a custody evaluation, a home study, a mental health evaluation, and a specific issue evaluation.

- “Mental health evaluation” means an evaluation of an individual's mental health conducted by a psychiatrist or psychologist who has the qualifications set forth in subsection (d)(1)(A)(i) or (ii) of this Rule. A mental health evaluation may include psychological testing.
- “Specific issue evaluation” means a focused investigation into a specific issue raised by a party, the child's attorney, or the court affecting the safety, health, or welfare of the child as may affect the child's best interests.

Training and Experience

- A custody evaluator shall have experience in conducting or observing custody evaluations, and shall have demonstrated knowledge of and experience in the following topics:
- (i) domestic and family violence;
- (ii) child neglect and abuse, including sexual abuse;
- (iii) child and adult development;
- (iv) trauma and its impact on children and adults;
- (v) family dynamics and conflict resolution;
- (vi) disability-related issues; and
- (vii) the impact of divorce and separation on children and adults.

RULE 9-205.2. PARENTING COORDINATION

A parenting coordinator also shall have completed:

- (A) at least 20 hours of training in a family mediation training program; and
- (B) at least 40 hours of accredited specialty training in topics related to parenting coordination, including conflict coaching, developmental stages of children, dynamics of high-conflict families, family violence dynamics, parenting skills, problem-solving techniques, and the stages and effects of divorce.

MD Judicial Council Domestic Law Committee-

Behavioral Health Workgroup

MD Code, Family Law, § 9-107
§ 9-107. Disability of party to custody or visitation proceedings

(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.

MD R FAM LAW ACT Rule 9-204
RULE 9-204. EDUCATIONAL SEMINAR

a) Applicability. This Rule applies in an action in which child support, custody, or visitation is involved and the court determines to send the parties to an educational seminar designed to minimize disruptive effects of separation and divorce on the lives of children.

Cross reference: Code, Family Law Article, § 7-103.2.

(b) Order to Attend Seminar.

(1) Subject to subsection (b)(2) of this Rule and as allowed or required by the county's case management plan required by Rule 16-302 (b), the court may order the parties to attend an educational seminar within the time set forth in the plan. The content of the seminar shall be as prescribed in section (c) of this Rule. If a party who has been ordered to attend a seminar fails to do so, the court may not use its contempt powers to compel attendance or to punish the party for failure to attend but may consider the failure as a factor in determining custody and visitation.

(2) A party who (A) is incarcerated, (B) lives outside the State in a jurisdiction where a comparable seminar or course is not available, or (C) establishes good cause for exemption may not be ordered to attend the seminar.

Committee note: Code, Family Law Article, § 7-103.2(c)(2)(v) prohibits exemption based on evidence of domestic violence, child abuse, or neglect.

(c) Content. The seminar shall consist of one or two sessions, totaling six hours. Topics shall include:

(1) the emotional impact of divorce on children and parents;

(2) developmental stages of children and the effects of divorce on children at different stages;

(3) changes in the parent-child relationship;

(4) discipline;

(5) transitions between households;

(6) skill-building in

(A) parental communication with children and with each other,

(B) explaining divorce to children,

(C) problem-solving and decision-making techniques,

(D) conflict resolution,

(E) coping strategies,

(F) helping children adjust to family changes,

(G) avoiding inappropriate interactions with the children, and

(H) use of the Maryland Parenting Plan Tool and development of a parenting plan; and

(7) resources available in cases of domestic violence, child abuse, and neglect.

(d) Scheduling. The provider of the seminar shall establish scheduling procedures so that parties in actions where domestic violence, child abuse, or neglect is alleged do not attend the seminar at the same time and so that any party who does not wish to attend a seminar at the same time as the opposing party does not have to do so.

(e) Costs. The fee for the seminar shall be set in accordance with Code, Courts Article, § 7-202. Payment may be compelled by order of court and assessed among the parties as the court may direct. For good cause, the court may waive payment of the fee.

MD R FAM LAW ACT Rule 9-204.1
RULE 9-204.1. PARENTING PLANS

(a) Definitions. The following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(1) Decision-Making Authority (Legal Custody). Decision-Making Authority, also called legal custody, refers to how major long-term decisions about a child's medical care, mental health, education, religious training, and extracurricular activities are made.

(2) Parenting Plan. Parenting Plan means a written agreement about how parties will work together to take care of a child.

(3) Parenting Time (Physical Custody). Parenting Time, also called physical custody, refers to where a child lives and the amount of time the child spends with each party.

(b) Introduction of Parenting Plan. At the parties' first appearance in court on a decision-making authority or parenting time matter, the court shall provide to each party a paper copy of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Tool and direct them to an electronic version of these documents. The court shall advise the parties that they may work separately, together, or with a mediator to develop a parenting plan they believe is in the best interest of their child.

(c) Best Interest of the Child. In determining what decision-making authority and parenting time arrangement is in the best interest of the child, the parties 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:

(A) place the child's needs above the parties' needs;

(B) protect the child from the negative effects of any conflict between the parties; and

(C) 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) 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:

(A) how they communicate with each other;

(B) whether they can co-parent without disrupting the child's social and school life; and

(C) 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 deemed appropriate by the parties.

(d) No Agreement Reached. If the parties do not reach a comprehensive parenting plan, they shall complete a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time pursuant to Md. Rule 9-204.2.

MD R FAM LAW ACT Rule 9-205

RULE 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

(a) Applicability; Definitions.

(1) This Rule applies to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including:

(A) an initial action to determine custody or visitation;

(B) an action to modify an existing order or judgment as to custody or visitation; and

(C) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

(2) In this Rule, the following definitions apply:

(A) “Abuse” has the meaning stated in Code, Family Law Article, § 4-501.

(B) “Coercive control” means a pattern of emotional or psychological manipulation, maltreatment, threat of force, or intimidation used to compel an individual to act, or refrain from acting, against the individual's will.

(C) “MACRO” means the Mediation and Conflict Resolution Office, a unit within the Administrative Office of the Courts.

(b) Duty of Court.

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

(A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child; and

(B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

(2) If a party or a child represents to the court in good faith that there is a genuine issue of abuse of the party or child or coercive control of a party and that, as a result, mediation would be inappropriate, the court may not order mediation.

(3) If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Cross reference: With respect to subsection (b)(2) of this Rule, see Rule 1-341 and Rules 19-303.1 and 19-303.3 of the Maryland Attorneys' Rules of Professional Conduct.

(c) Qualifications of Court-Designated Mediator. To be eligible for designation as a mediator by the court, an individual shall:

(1) have the basic qualifications set forth in Rule 17-205 (a);

(2) have completed at least 20 hours of training in a family mediation training program that includes:

(A) Maryland law relating to separation, divorce, annulment, child custody and visitation, and child and spousal support;

(B) the emotional aspects of separation and divorce on adults and children;

(C) an introduction to family systems and child development theory;

(D) the interrelationship of custody, visitation, and child support; and

(E) if the training program is given after January 1, 2013, strategies to (i) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (ii) safely terminate a mediation when termination is warranted; and

(3) have co-mediated at least eight hours of child access mediation sessions with an individual on the list maintained by MACRO pursuant to Rule 17-207 (a)(5)(B), or, in addition to any observations during the training program, have observed at least eight hours of such mediation sessions.

(d) Court Designation of Mediator.

(1) In an order referring a matter to mediation, the court shall:

(A) designate a mediator from a list of qualified mediators approved by MACRO;

(B) if the court has a unit of court mediators that provides child access mediation services, direct that unit to select a qualified mediator; or

(C) direct an ADR organization, as defined in Rule 17-102, to select a qualified mediator.

(2) If the referral is to a fee-for-service mediation, the order shall specify the hourly rate that the mediator may charge for mediation in the action, which may not exceed the maximum stated in the applicable fee schedule.

(3) A mediator selected pursuant to subsection (d)(1)(B) or (d)(1)(C) of this Rule has the status of a court-designated mediator.

(4) In designating a mediator, the court is not required to choose at random or in any particular order. The court should endeavor to use the services of as diverse a range of qualified mediators as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

Cross reference: Courts are encouraged to use a broad range of practitioners that reflect the diversity of the parties who appear before the courts.

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications set forth in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on the MACRO's list, by filing with the court no later than 15 days after service of the order of referral to mediation a Request to Substitute Mediator.

(A) The Request to Substitute Mediator shall be substantially in the following form:

[Caption of Case]

REQUEST TO SUBSTITUTE MEDIATOR AND SELECTION OF MEDIATOR BY STIPULATION

We agree to attend mediation proceedings pursuant to Rule 9-205 conducted by _____ (Name, address, and telephone number of mediator), and we have made payment arrangements with the mediator. We request that the court substitute this mediator for the mediator designated by the court.

(Signature of Plaintiff)

(Signature of Defendant)

(Signature of Plaintiff's Attorney, if any)

(Signature of Defendant's Attorney, if any)

I, _____ (Name of Mediator), agree to conduct mediation proceedings in the above-captioned case in accordance with Rule 9-205 (e), (f), (g), (h), (i), (j), and (k).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by Rule 9-205 (d)(5).

Signature of Mediator

(B) If the Request to Substitute Mediator is timely filed, the court shall enter an order striking the original designation and substituting the individual selected by the parties to conduct the mediation, unless the court determines after notice and opportunity to be heard that the individual does not have the qualifications prescribed by subsection (d)(5) of this Rule. If no Request to Substitute Mediator is timely filed, the mediator shall be the court-designated mediator.

(C) A mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) of this Rule is not subject to the fee schedule provided for in section (l) of this Rule and Rule 17-208 while conducting mediation proceedings pursuant to the stipulation and designation, but shall comply with all other obligations of a court-designated mediator.

Committee note: Nothing in this Rule or the Rules in Title 17 prohibits the parties from selecting any individual, regardless of qualifications, to assist them in the resolution of issues by participating in ADR that is not court-ordered.

(e) Role of Mediator. The role of a mediator designated by the court or agreed upon by the parties is as set forth in Rule 17-103.

(f) Confidentiality. Confidentiality of mediation communications under this Rule is governed by Rule 17-105.

MD R FAM LAW ACT Rule 9-205.1
RULE 9-205.1. APPOINTMENT OF CHILD'S ATTORNEY

(a) Applicability. This Rule applies to the appointment of an attorney for a child in actions involving child custody or child access.

Cross reference: See Code, Family Law Article, § 1-202 and the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access.

(b) Factors. In determining whether to appoint an attorney for a child, the court should consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment. Appointment may be most appropriate in cases involving the following factors, allegations, or concerns:

(1) request of one or both parties;

(2) high level of conflict;

(3) inappropriate adult influence or manipulation;

(4) past or current child abuse or neglect;

(5) past or current mental health problems of the child or party;

(6) special physical, educational, or mental health needs of the child that require investigation or advocacy;

(7) actual or threatened family violence;

(8) alcohol or other substance abuse;

(9) consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;

(10) relocation that substantially reduces the child's time with a parent, sibling, or both; or

(11) any other factor that the court considers relevant.

Comment: A court should provide for an adequate and effective attorney for a child in all cases in which an appointment is warranted, regardless of the economic status of the parties. The court should make the appointment as soon as practicable after it determines that the appointment is warranted. A court should appoint only attorneys who have agreed to serve in child custody and child access cases in the assigned role and have been trained in accordance with Guideline 4 of the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access. In making appointments, the court should fairly and equitably distribute cases among all qualified attorneys, taking into account the attorney's availability and caseload. Before asking an attorney to provide representation pro bono publico to a child, the court should consider the number of other similar cases the attorney has recently accepted on a pro bono basis from the court.

(c) Appointment Order.

(1) Content. An order appointing an attorney for a child shall:

(A) specify whether the attorney is to serve as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney;

(B) authorize the appointed attorney to have reasonable access to the child and to all otherwise privileged or confidential information about the child, without the necessity of any further order of court or the execution of a release;

(C) permit the attorney to participate in discovery under Title 2 of these Rules as though the child were a party;

(D) provide that the service and notice provisions in Title 1 of these Rules apply as though the child were a party;

(E) state any other duties or responsibilities required by the court;

(F) state when the appointment terminates; and

(G) unless the attorney has agreed to serve pro bono publico, include provisions concerning compensation for the attorney.

Cross reference: The court should write an appointment order in plain language, understandable to non-attorneys.

(2) Copies to Parties and Attorneys. The court shall send a copy of the order appointing an attorney for the child to each attorney of record and to each party, whether or not represented by an attorney.

Cross reference: As to the attorney's compensation, see Guideline 6 of the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access.

Source: This Rule is new.

MD R FAM LAW ACT Rule 9-205.2
9-205.2. PARENTING COORDINATION

(a) Applicability. This Rule applies to the appointment of parenting coordinators by a court and to consent orders approving the employment of parenting coordinators by the parties in actions under this Chapter.

Committee note: Actions in which parenting coordination may be used include an initial action to determine custody or visitation and an action to modify an existing order or judgment as to custody or visitation.

(b) Definitions. In this Rule, the following definitions apply:

(1) Parenting Coordination. “Parenting coordination” means a process in which the parties work with a parenting coordinator to reduce the effects or potential effects of conflict on the parties' child. Although parenting coordination may draw upon alternative dispute resolution techniques, parenting coordination is not governed by the Rules in Title 17, except as otherwise provided in this Rule.

(2) Parenting Coordinator. “Parenting coordinator” means an impartial provider of parenting coordination services.

(c) Qualifications of Parenting Coordinator.

(1) Age, Education, and Experience. To be designated or approved by the court as a parenting coordinator, an individual shall:

(A) be at least 21 years old and hold a bachelor's degree from an accredited college or university;

(B) hold a post-graduate degree in psychology, social work, counseling, negotiation, conflict management, or a related subject area, or from an accredited medical or law school;

(C) have at least three years of related professional experience undertaken after receiving the post-graduate degree; and

(D) hold a current license if required in the individual's area of practice.

(2) Parenting Coordination Training. A parenting coordinator also shall have completed:

(A) at least 20 hours of training in a family mediation training program meeting the requirements of Rule 17-106 (b); and

(B) at least 40 hours of accredited specialty training in topics related to parenting coordination, including conflict coaching, developmental stages of children, dynamics of high-conflict families, family violence dynamics, parenting skills, problem-solving techniques, and the stages and effects of divorce.

Committee note: The accredited specialty training requirement may be met by training offered by recognized national organizations such as the American Bar Association or the Association of Family and Conciliation Courts.

(3) Continuing Education. Within each calendar year, a parenting coordinator shall complete a minimum of four hours of continuing education approved by the Administrative Office of the Courts in one or more of the topics listed in subsection (c)(2) of this Rule and in recent developments in family law. The Administrative Office shall maintain a list of approved continuing education programs.

(d) Parenting Coordinator Lists. An individual who has the qualifications listed in section (c) of this Rule and seeks court appointment as a parenting coordinator shall submit an application to the family support services coordinator of the circuit court for each county in which the individual seeks appointment. The application shall document that the individual meets the qualifications required in section (c) of this Rule. If satisfied that the applicant meets the qualifications, the family support services coordinator shall place the applicant's name on a list of qualified individuals which, together with the information submitted by each individual on the list, shall be accessible to the public.

(e) Approval of Parenting Coordinator Employed by Parties. In any action in which the custody of or visitation with a child of the parties is or was at issue, the parties, by agreement, may employ a parenting coordinator to assist them in dealing with existing or future conflicts regarding their access to and responsibilities for the child. The parties may jointly request the court to enter a consent order approving the agreement. The court shall enter such an order if it finds that the parenting coordinator has the qualifications set forth in section (c) of this Rule and that the agreement:

(1) is in writing and signed by the parties and the parenting coordinator;

(2) states the services to be provided by the parenting coordinator;

(3) states the extent to which the parenting coordinator may receive confidential or privileged information pertaining to the child or the parties and any limitations on the use of that information by the parenting coordinator;

(4) states the amount or rate of compensation to be paid to the parenting coordinator, which may exceed the amount or rate provided for in section (k) of this Rule; and

(5) is otherwise consistent with the best interest of the child.

Committee note: Parties who, by agreement, employ a parenting coordinator on their own initiative are not required to seek court approval. Section (e) of this Rule applies only if they request a court order approving the agreement.

(f) Appointment of Parenting Coordinator by Court. In an action in which the custody of or visitation with a child of the parties is in issue and the court determines that the level of conflict between the parties with respect to that issue so warrants, the court may appoint a parenting coordinator in accordance with this section.

(1) Appointment During Pendency of Action. On motion of a party, on joint request of the parties, or on the court's own initiative and after notice and hearing, the court may appoint a parenting coordinator during the pendency of the action. Unless sooner terminated in accordance with this Rule, the appointment shall terminate upon the entry of a judgment granting or modifying custody or visitation.

(2) Appointment Upon Entry of Judgment. Upon entry of a judgment granting or modifying custody or visitation, the court, with the consent of the parties and after a hearing, may appoint a parenting coordinator. The court may appoint the individual who served as a parenting coordinator during the pendency of the action. Unless sooner terminated in accordance with this Rule, the appointment of a post-judgment parenting coordinator shall not exceed two years unless the parties and the parenting coordinator agree in writing to an extension for a specified longer period.

Committee note: Appointment of a parenting coordinator does not affect the applicability of Rules 9-204, 9-205, or 9-205.1, nor does the appointment preclude the use of an alternative dispute resolution process under Title 17 of these Rules.

(3) Selection. The court may not appoint an individual as a parenting coordinator unless the individual:

(A) has the qualifications listed in section (c) of this Rule,

(B) is willing to serve as the parenting coordinator in the action, and

(C) agrees not to charge or accept a fee in excess of that allowed in the applicable fee schedule adopted pursuant to subsection (k)(1) of this Rule.

(4) Contents of Order or Judgment. An order or judgment appointing a parenting coordinator shall include:

(A) the name, business address, e-mail address, and telephone number of the parenting coordinator;

(B) if there are allegations or findings of domestic violence committed by or against a party or child, any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, other children residing in the home of a party, and the parenting coordinator; and

Committee note: The order must be consistent with the relevant provisions of any other existing order, such as a “no contact” requirement that is included in a civil protective order or is a condition of pre-trial release in a criminal case.

(C) if the appointment is of a post-judgment parenting coordinator, any decision-making authority of the parenting coordinator authorized pursuant to subsection (g)(9) of this Rule.

(g) Services Permitted. As appropriate, a parenting coordinator may:

(1) if there is no operative custody and visitation order, work with the parties to develop an agreed plan for custody and visitation;

(2) if there is an operative custody and visitation order, assist the parties in amicably resolving disputes about the interpretation of and compliance with the order and in making any joint recommendations to the court for any changes to the order;

(3) educate the parties about making and implementing decisions that are in the best interest of the child;

(4) assist the parties in developing guidelines for appropriate communication between them;

(5) suggest resources to assist the parties;

(6) assist the parties in modifying patterns of behavior and in developing parenting strategies to manage and reduce opportunities for conflict in order to reduce the impact of any conflict upon their child;

(7) in response to a subpoena issued at the request of a party or an attorney for a child of the parties, or upon action of the court pursuant to Rule 2-514 or 5-614, produce documents and testify in the action as a fact witness;

(8) if concerned that a party or child is in imminent physical or emotional danger, communicate with the court or court personnel to request an immediate hearing; and

(9) decide post-judgment disputes by making minor, temporary modifications to child access provisions ordered by the court if (A) the judgment or post-judgment order of the court authorizes such decision making, and (B) the parties have agreed in writing or on the record that the post-judgment parenting coordinator may do so.

Committee note: Examples of such modifications include one-time or minor changes in the time or place for child transfer and one-time or minor deviations from access schedules to accommodate special events or circumstances.

(h) Services Not Permitted. A parenting coordinator may not:

(1) except as permitted by subsections (g)(7) and (8) of this Rule, communicate orally or in writing with the court or any court personnel regarding the substance of the action;

Committee note: This subsection does not prohibit communications with respect to routine administrative matters; collection of fees, including submission of records of the number of contacts with each party and the duration of each contact; or resignation. Nothing in the subsection affects the duty to report child abuse or neglect under any provision of federal or State law or the right of the parenting coordinator to defend against allegations of misconduct or negligence.

(2) testify in the action as an expert witness; or

Cross reference: See Rule 5-702 as to expert witnesses.

(3) except for decision making by a post-judgment parenting coordinator authorized pursuant to subsection (g)(9) of this Rule, make parenting decisions on behalf of the parties.

(i) Confidential Information.

(1) Access to Case Records. Except as otherwise provided in this subsection, the parenting coordinator shall have access to all case records in the action. If a document or any information contained in a case record is not open to public inspection under the Rules in Title 16, Chapter 900, the court shall determine whether the parenting coordinator may have access to it and shall specify any conditions to that access.

Cross reference: See Rule 16-903 for the definition of “case record.”

(2) Other Confidential Information.

(A) A parenting coordinator may not require or coerce the parties or an attorney for the child to release any confidential information that is not included in the case record.

(B) Confidential or privileged information received by the parenting coordinator from a party or from a third person with the consent of a party may be disclosed by the parenting coordinator to the other party, to an attorney for the child, and in court pursuant to subsections (g)(7) and (8) of this Rule. Unless otherwise required by law, the parenting coordinator may not disclose the information to anyone else without the consent of the party who provided the information or consented to a third person providing it.

(j) Removal or Resignation of Parenting Coordinator.

(1) Removal. The court shall remove a parenting coordinator:

(A) on motion of a party or an attorney for the child, if the court finds good cause, or

(B) on a finding that continuation of the appointment is not in the best interest of the child.

(2) Resignation. A parenting coordinator may resign at any time by written notice sent by first-class mail to each party and any attorney for the child. The notice shall state the effective date of the resignation and that the parties may request the appointment of another parenting coordinator. The notice shall be sent at least 15 days before the effective date of the resignation. Promptly after mailing the notice, and at least seven days before the effective date of resignation, the parenting coordinator shall file a copy of the notice with the court.

(k) Fees.

(1) Fee Schedules. Subject to the approval of the Chief Justice of the Supreme Court, the county administrative judge of each circuit court may develop and adopt maximum fee schedules for parenting coordinators. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide parenting coordination services and the ability of litigants to pay for those services. A parenting coordinator appointed by the court may not charge or accept a fee for parenting coordination services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal from all lists maintained pursuant to section (d) of this Rule, Rule 9-205, and the Rules in Title 17.

(2) Allocation of Fees and Expenses. Subject to any agreement entered into by the parties pursuant to section (e) of this Rule, the court shall designate how and by whom the parenting coordinator shall be paid. If the court finds that the parties have the financial means to pay the fees and expenses of the parenting coordinator, the court shall allocate the fees and expenses of the parenting coordinator between the parties and may enter an order against either or both parties for the reasonable fees and expenses.

MD R FAM LAW ACT Rule 9-205.3
RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

(a) Applicability. This Rule applies to the appointment or approval by a court of a person to perform an assessment in an action under this Chapter in which child custody or visitation is at issue.

Committee note: In this Rule, when an assessor is selected by the court, the term “appointment” is used. When the assessor is selected by the parties and the selection is incorporated into a court order, the term “approval” is used.

(b) Definitions. In this Rule, the following definitions apply:

(1) Assessment. “Assessment” includes a custody evaluation, a home study, a mental health evaluation, and a specific issue evaluation.

(2) Assessor. “Assessor” means an individual who performs an assessment.

(3) Custody Evaluation. “Custody evaluation” means a study and analysis of the needs and development of a child who is the subject of an action or proceeding under this Chapter and of the abilities of the parties to care for the child and meet the child's needs.

(4) Custody Evaluator. “Custody evaluator” means an individual appointed or approved by the court to perform a custody evaluation.

(5) Home Study. “Home study” means an inspection of a party's home that focuses upon the safety and suitability of the physical surroundings and living environment for the child.

(6) Mental Health Evaluation. “Mental health evaluation” means an evaluation of an individual's mental health performed by a psychiatrist or psychologist who has the qualifications set forth in subsection (d)(1)(A) or (B) of this Rule. A mental health evaluation may include psychological testing.

(7) Specific Issue Evaluation. “Specific issue evaluation” means a focused investigation into a specific issue raised by a party, the child's attorney, or the court affecting the safety, health, or welfare of the child as may affect the child’s best interests.

Committee note: A specific issue evaluation is not a “mini” custody evaluation. A custody evaluation is a comprehensive study of the general functioning of a family and of the parties’ parenting capacities. A specific issue evaluation is an inquiry, narrow in scope, into a particular issue or issues that predominate in a case. The issue or issues are defined by questions posed by the court to the assessor in an order. The evaluation primarily is fact-finding, but the court may opt to receive a recommendation. Examples of questions that could be the subject of specific issue evaluations are questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating.

(8) State. “State” includes the District of Columbia.

(c) Authority.

(1) Generally. On motion of a party or child's counsel, or on its own initiative, the court may order an assessment to aid the court in evaluating the health, safety, welfare, or best interests of a child in a contested custody or visitation case.

(2) Appointment or Approval. The court may appoint or approve any person deemed competent by the court to perform a home study. The court may not appoint or approve a person to perform a custody evaluation or specific issue evaluation unless (A) the assessor has the qualifications set forth in subsections (d)(1) and (d)(2) of this Rule, or (B) the qualifications have been waived for the assessor pursuant to subsection (d)(3) of this Rule.

(3) Cost. The court may not order the cost of an assessment to be paid, in whole or in part, by a party without giving the parties notice and an opportunity to object.

Committee note: Nothing in this Rule precludes the court from ordering preliminary screening or testing for alcohol and substance use.

(d) Qualifications of Custody Evaluator.

(1) Education and Licensing. A custody evaluator shall be:

(A) a physician licensed in any State who is board-certified in psychiatry or has completed a psychiatry residency accredited by the Accreditation Council for Graduate Medical Education or a successor to that Council;

(B) a Maryland licensed psychologist or a psychologist with an equivalent level of licensure in any other state;

(C) a Maryland licensed clinical marriage and family therapist or a clinical marriage and family therapist with an equivalent level of licensure in any other state;

(D) a Maryland licensed certified social worker-clinical or a clinical social worker with an equivalent level of licensure in any other state;

(E) (i) a Maryland licensed graduate or master social worker with at least two years of experience in (a) one or more of the areas listed in subsection (d)(2) of this Rule, (b) performing custody evaluations, or (c) any combination of subsections (a) and (b); or (ii) a graduate or master social worker with an equivalent level of licensure and experience in any other state; or

(F) a Maryland licensed clinical professional counselor or a clinical professional counselor with an equivalent level of licensure in any other state.

(2) Training and Experience. Unless waived by the court, a custody evaluator shall have completed, or commit to completing, the next available training program that conforms with guidelines established by the Administrative Office of the Courts. The current guidelines shall be posted on the Judiciary's website. In addition to complying with the continuing requirements of the custody evaluator's field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:
(A) domestic violence;
(B) child neglect and abuse;
(C) family conflict and dynamics;
(D) child and adult development; and
(E) impact of divorce and separation on children and adults.

(3) Waiver of Requirements. If a court employee has been performing custody evaluations on a regular basis as an employee of, or under contract with, the court for at least five years prior to January 1, 2016, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual participates in at least 20 hours per year of continuing education relevant to the performance of custody evaluations, including course work in one or more of the areas listed in subsection (d)(2) of this Rule.

(e) Custody Evaluator Lists and Selection.

(1) Custody Evaluator Lists. If the circuit court for a county appoints custody evaluators who are not court employees, the family support services coordinator for the court shall maintain a list of qualified custody evaluators. An individual, other than a court employee, who seeks appointment by a circuit court as a custody evaluator shall submit an application to the family support services coordinator for that court. If the applicant has the qualifications set forth in section (d) of this Rule, the applicant's name shall be placed on a list of qualified individuals. The family support services coordinator, upon request, shall make the list and the information submitted by each individual on the list available to the public.

(2) Selection of Custody Evaluator.

(A) By the Parties. By agreement, the parties may employ a custody evaluator of their own choosing who may, but need not, be on the court's list. The parties may, but need not, request the court to enter a consent order approving the agreement and selection. The court shall enter the order if one is requested and the court finds that the custody evaluator has the qualifications set forth in section (d) and that the agreement contains the relevant information set forth in section (g) of this Rule.

(B) By the Court. An appointment of an individual, other than a court employee, as a custody evaluator by the court shall be made from the list maintained by the family support services coordinator. In appointing a custody evaluator from a list, the court is not required to choose at random or in any particular order from among the qualified evaluators on the list. The court should endeavor to use the services of as many qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective appointees. An individual appointed by the court to serve as a custody evaluator shall have the qualifications set forth in section (d) of this Rule.

(3) Selection of Assessor to Perform Specific Issue Evaluation. Selection of an assessor to perform a specific issue evaluation shall be made from the same list and by the same process as pertains to the selection of a custody evaluator.

(f) Description of Custody Evaluation.

(1) Mandatory Elements. Subject to any protective order of the court, a custody evaluation shall include:

(A) a review of the relevant court records pertaining to the litigation;

(B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child or, if an adult who lives in a household with the child cannot be located despite best efforts by the custody evaluator, documentation or a description of the custody evaluator's efforts to locate the adult and any information gained about the adult;

(C) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed;

(D) a review of any relevant educational, medical, and legal records pertaining to the child;

(E) if feasible, observations of the child with each party, whenever possible in that party's household;

(F) contact with any high neutrality/low affiliation collateral sources of information, as determined by the assessor;

Committee note: “High neutrality/low affiliation” is a term of art that refers to impartial, objective collateral sources of information. For example, in a custody contest in which the parties are taking opposing positions about whether the child needs to continue taking a certain medication, the child's treating doctor would be a high neutrality/low affiliation source, especially if the doctor had dealt with both parties.

(G) screening for intimate partner violence;

(H) factual findings about the needs of the child and the capacity of each party to meet the child's needs; and

(I) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why.

(2) Optional Elements -- Generally. Subject to subsection (f)(4) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

(A) contact with collateral sources of information that are not high neutrality/low affiliation;

(B) a review of additional records;

(C) employment verification;

(D) a mental health evaluation;

(E) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and

(F) an investigation into any other relevant information about the child's needs.

(3) Elements of Specific Issue Evaluation. Subject to any protective order of the court, a specific issue evaluation may include any of the elements listed in subsections (f)(1)(A) through (G) and (f)(2) of this Rule. The specific issue evaluation shall include fact-finding pertaining to each issue identified by the court and, if requested by the court, a recommendation as to each.

(4) Optional Elements Requiring Court Approval. The custody evaluator or specific issue evaluation assessor may not include an optional element listed in subsection (f)(2)(D), (E), or (F) if any additional cost is to be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element. or (F) if any additional cost is to be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element.

(g) Order of Appointment. An order appointing or approving a person to perform an assessment shall include:

(1) the name, business address, and telephone number of the person being appointed or approved;

(2) any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, any other children residing in the home of a party, and the person being appointed or approved;

(3) a description of the task or tasks the person being appointed or approved is to undertake;

(4) a provision concerning payment of any fee, expense, or charge, including a statement of any hourly rate that will be charged which, as to a court appointment, may not exceed the maximum rate established under section (n) of this Rule and, if applicable, a time estimate for the assessment;

(5) the term of the appointment or approval and any deadlines pertaining to the submission of reports to the parties and the court, including the dates of any pretrial or settlement conferences associated with the furnishing of reports;

(6) any restrictions upon the copying and distribution of reports, whether pursuant to this Rule, agreement of the parties, or entry of a separate protective order;

(7) as to a custody evaluation, whether a written report pursuant to subsection (i)(1)(B) of this Rule or an oral report on the record pursuant to subsection (i)(1)(A) of this Rule is required;

(8) as to a specific issue evaluation, each issue to be evaluated and whether a recommendation is requested as to each; and

(9) any other provisions the court deems necessary.

(h) Removal or Resignation of Person Appointed or Approved to Perform an Assessment.

(1) Removal. The court may remove a person appointed or approved to perform an assessment upon a showing of good cause.

(2) Resignation. A person appointed or approved to perform an assessment may resign prior to completing the assessment and preparing a report pursuant to section (i) of this Rule only upon a showing of good cause, notice to the parties, an opportunity to be heard, and approval of the court.

(i) Report of Assessor.

(1) Custody Evaluation Report. A custody evaluator shall prepare a report and provide the parties access to the report in accordance with subsection (i)(1)(A) or (i)(1)(B) of this Rule.

(A) Oral Report on the Record. If the court orders a pretrial or settlement conference to be held at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered, and the order appointing or approving the custody evaluator does not require a written report, the custody evaluator may present the custody evaluation report orally to the parties and the court on the record at the conference. The custody evaluator shall produce and provide to the court and parties at the conference a written list containing an adequate description of all documents reviewed in connection with the custody evaluation. If custody and access are not resolved at the conference, and no written report has been provided, the court shall (i) provide a transcript of the oral report to the parties free of charge and, if a copy of the transcript is prepared for the court's file, maintain that copy under seal, or (ii) direct the custody evaluator to prepare a written report and furnish it to the parties and the court in accordance with subsection (i)(1)(B) of this Rule. Absent the consent of the parties, the judge or magistrate who presides over a settlement conference at which an oral report is presented shall not preside over a hearing or trial on the merits of the custody dispute.

(B) Written Report Prepared by the Custody Evaluator. If an oral report is not prepared and presented pursuant to subsection (i)(1)(A) of this Rule, the custody evaluator shall prepare a written report of the custody evaluation and shall include in the report a list containing an adequate description of all documents reviewed in connection with the custody evaluation. The report shall be furnished to the parties and to the court under seal at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered. The court may shorten or extend the time for good cause shown but the report shall be furnished to the parties no later than 15 days before the scheduled trial or hearing.

(2) Report of Specific Issue Evaluation. An assessor who performed a specific issue evaluation shall prepare a written report that addresses each issue identified by the court in its order of appointment or approval and, if requested by the court, make a recommendation. The report shall be furnished to the parties and to the court, under seal, as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date. The report shall include a list containing an adequate description of all documents reviewed in connection with the specific issue evaluation.

(3) Report of Home Study. Unless preparation of a written report is waived by the parties, an assessor who performed a home study shall prepare a written report of the home study and furnish it to the parties and to the court under seal. The report shall be furnished as soon as practicable after completion of the home study and, if a date is specified in the order of appointment or approval, by that date.

(4) Report of Mental Health Evaluation. An assessor who performed a mental health evaluation shall prepare a written report. The report shall be made available to the parties solely for use in the case and shall be furnished to the court under seal. The report shall be made available and furnished as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date.

Committee note: An assessor's written report submitted to the court in accordance with section (i) of this Rule shall be kept by the court under seal. The only access to these reports by a judge or magistrate shall be in accordance with subsections (k)(2) and (k)(3) of this Rule. Each circuit court, through MDEC, shall devise the means for keeping these reports under seal.

(j) Copying and Dissemination of Report. A party may copy a written report of an assessment or the transcript of an oral report prepared pursuant to subsection (i)(1)(A) of this Rule but, except as permitted by the court, shall not disseminate the report or transcript other than to individuals intended to be called as experts by the party.

Cross reference: See subsection (g)(6) of this Rule concerning the inclusion of restrictions on copying and distribution of reports in an order of appointment or approval of an assessor. See the Rules in Title 15, Chapter 200, concerning proceedings for contempt of court for violation of a court order.

(k) Court Access to Written Report.

(1) Generally. Except as otherwise provided by this Rule, the court may receive access to a report by an individual appointed or approved by the court to perform an assessment only if the report has been admitted into evidence at a hearing or trial in the case.

(2) Advance Access to Report by Stipulation of the Parties. Upon consent of the parties, the court may receive and read the assessor's report in advance of the hearing or trial.

(3) Access to Report by Settlement Judge or Magistrate. A judge or magistrate conducting a settlement conference shall have access to the assessor's report.

(l) Discovery.

(1) Generally. Except as provided in this section, an individual who performs an assessment under this Rule is subject to the Maryland Rules applicable to discovery in civil actions.

(2) Deposition of Court-Paid Assessor. Unless leave of court is obtained, any deposition of an assessor who is a court employee or is working under contract for the court and paid by the court shall: (A) be held at the courthouse where the action is pending or other court-approved location; (B) take place after the date on which an oral or written report is presented to the parties; and (C) not exceed two hours, with the time to be divided equally between the parties.

(m) Testimony and Report of Assessor at Hearing or Trial.

(1) Subpoena for Assessor. A party requesting the presence of the assessor at a hearing or trial shall subpoena the assessor no less than ten days before the hearing or trial.

(2) Admission of Report Into Evidence Without Presence of Assessor. The court may admit an assessor's report into evidence without the presence of the assessor, subject to objections based other than on the presence or absence of the assessor. If the assessor is present, a party may call the assessor for cross-examination.

Committee note: The admissibility of an assessor's report pursuant to subsection (m)(2) of this Rule does not preclude the court or a party from calling the assessor to testify as a witness at a hearing or trial.

(n) Fees.

(1) Applicability. Section (n) of this Rule does not apply to a circuit court for a county in which all custody evaluations are performed by court employees, free of charge to the litigants.

(2) Fee Schedules. Subject to the approval of the Chief Justice of the Supreme Court, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual from all lists maintained pursuant to subsection (e)(1) of this Rule.

(3) Allocation of Fees and Expenses. As permitted by law, the court may order the parties or a party to pay the reasonable and necessary fees and expenses incurred by an individual appointed by the court to perform an assessment in the case. The court may fairly allocate the reasonable and necessary fees of the assessment between or among the parties. In the event of the removal or resignation of an assessor, the court may consider the extent to which any fees already paid to the assessor should be returned.