

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 444 (Senators Colburn and Hershey)
Judicial Proceedings

Family Law - Denial of Custody or Visitation - Sexual Abuse of a Minor

This bill prohibits a court, unless good cause is shown by clear and convincing evidence, from awarding custody of a child or visitation with a child to a parent (1) who has been found to be guilty of “sexual abuse of a minor” as defined in State law or (2) 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 Maryland, would constitute “sexual abuse of a minor.” The bill may not be construed to require that a party must be convicted of a crime before a court may make a determination regarding custody or visitation under existing statutory provisions when there is evidence of abuse or neglect.

The bill applies only to offenses committed on or after the bill’s October 1, 2014 effective date.

Fiscal Summary

State Effect: The bill’s changes do not materially affect the workload of the Judiciary.

Local Effect: The bill’s changes do not materially affect the workload of the circuit courts.

Small Business Effect: None.

Analysis

Current Law: Maryland courts resolve child custody disputes based on a determination of “what is in the child’s best interests.” In a custody dispute between the child’s parents, the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments. The criteria for judicial determination includes, but is not

limited to (1) the fitness of the parents; (2) the character and reputation of the parents; (3) the desire of the natural parents and any agreements between them; (4) the potential for maintaining natural family relations; (5) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment; (6) material opportunities affecting the future life of the child; (7) the age, health, and sex of the child; (8) the residences of the parents and the opportunity for visitation; (9) the length of the separation of the parents; and (10) whether there was a prior voluntary abandonment or surrender of custody of the child. *Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

In addition to the factors set forth in the *Sanders* decision, a court considering an award of joint custody must also examine a range of factors particularly relevant to a determination of joint custody, including (1) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare; (2) the willingness of the parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) the potential disruption of the child's social and school life; (7) the geographic proximity of parental homes; (8) the demands of parental employment; (9) the age and number of children; (10) the sincerity of the parents' request; (11) the financial status of the parents; (12) any impact on state or federal assistance; (13) the benefit to the parents; and (14) any other factors the court considers appropriate. *Taylor v. Taylor* 306 Md. 290 (1986).

Notwithstanding the common law standards governing determinations of custody or visitation, §§ 9-101 and 9-101.1 of the Family Law Article limit the court's discretion to determine custody or visitation if there is evidence of abuse or neglect. If the court has reasonable grounds to believe that a child has been abused or neglected by a party in a custody or visitation proceeding, § 9-101 required the court to determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party. Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court must deny custody or visitation rights to the party, except that the court may approve a supervised visitation arrangement that assures the child's safety and the physiological, psychological, and emotional well-being of the child.

Similarly, in a custody or visitation proceeding, § 9-101.1 requires the court to consider evidence of abuse by a party against the other parent of the party's child, the party's spouse, or 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. If the court finds that the party has committed abuse against any of these individuals, it must make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of the abuse.

A parent, household or family member, or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor is prohibited from causing sexual abuse to the minor. “Sexual abuse of a minor” is defined as an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not. Sexual abuse includes incest, rape, a sexual offense in any degree, sodomy, and unnatural or perverted sexual practices.

Background: Although the General Assembly has limited the discretion of the courts to award visitation in cases where there is a finding that the noncustodial parent has committed abuse toward the child, the spouse, or other household members, the courts have not denied all visitation except under exceptional circumstances. In *Arnold v. Naughton*, 61 Md. App. 427 (1985), *cert. denied*, 303 Md. 295 (1985), the Court of Special Appeals held that a finding that a noncustodial parent sexually abused the child did not preclude all visitation rights to that parent. A court could order limited, supervised visitation without abusing its discretion.

In the case *In Re: Adoption No. 12612*, 353 Md. 209 (1999), more commonly known as the “Pixley Case,” the Court of Appeals held that the law requiring the court to deny custody or visitation unless the court specifically finds no likelihood of further abuse or neglect applied when the abuse (in that case, murder) was directed against a sibling of the child whose custody was at issue. The trial court was therefore required to determine “whether abuse or neglect is likely to occur if custody or visitation rights” were granted to the mother, and, unless it found specifically that “there is no likelihood of further child abuse or neglect” by her, the court was required to deny custody and supervised visitation.

The U.S. Supreme Court and the Maryland Court of Appeals have also recognized that parents have a fundamental right to govern the care, custody, and control of their children without state interference, unless there is a showing of parental unfitness or the existence of exceptional circumstances. (See, e.g. *Troxel v. Granville*, 530 U.S. 57 (2000), *Koshko v. Haining*, 398 Md. 404 (2007), and *Janice M. v. Margaret K.*, 404 Md.661 (2008).)

Additional Information

Prior Introductions: HB 10 of 2013, a similar bill, received a hearing in the House Judiciary Committee but no further action was taken. Its cross file, SB 52, received a hearing in the Senate Judicial Proceeding Committee but no further action was taken.

Cross File: HB 68 (Delegate Haddaway-Riccio) - Judiciary.

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

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510