

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 646
Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

Family Law - Child Conceived Without Consent - Termination of Parental
Rights (Rape Survivor Family Protection Act)

This bill requires a court, after an evidentiary hearing, to terminate the parental rights of a respondent if the court (1) determines that the respondent has been served, as specified; (2) finds that the respondent was either convicted of, or finds by clear and convincing evidence that the respondent committed, an act of “nonconsensual sexual conduct” against the other parent that resulted in the conception of the child at issue; and (3) finds by clear and convincing evidence that it is in the best interest of the child to terminate the parental rights of the respondent. The court may not terminate parental rights pursuant to the bill’s provisions if the parents were married at the time of the conception of the child at issue unless the respondent has been convicted of an act of nonconsensual sexual conduct against the other parent that resulted in the child’s conception.

Fiscal Summary

State Effect: The bill’s provisions do not materially affect the workload of the Judiciary and are not anticipated to materially impact the workload of the Office of the Public Defender. Potential significant increase in federal grant revenues.

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

Small Business Effect: None.

Analysis

Bill Summary: A termination of parental rights under the bill's provisions completely terminates a parent's right to custody of, guardianship of, and inheritance from the child.

An action for termination of parental rights under the bill's provisions may be filed by either parent of the child, the child, or the child's guardian and must be initiated by the filing of a complaint. A respondent must file an answer to a complaint within 30 days after service. A scheduling conference must be held within 60 days after the complaint is served, at which the court (1) must issue a scheduling order which takes into consideration the best interest of the child, the time needed for discovery, and the interest of justice and (2) may determine temporary custody of the minor child. A complaint must include notice to the respondent regarding the scheduling conference. Unless it is contrary to the best interest of the child, the court must hold an evidentiary hearing and issue a decision on termination of parental rights within 180 days after service of the complaint.

When proof is made by affidavit that good-faith efforts to serve the respondent have not succeeded or that the respondent has acted to evade service, the court may order other means of service, as specified. The courts must rule on any motion for alternative service within 15 days after the filing of the motion. The court may not require publication of the name or personally identifying information of any party or the child. A party's testimony in a proceeding pursuant to the bill is inadmissible as evidence in a criminal proceeding against that party if the criminal proceeding involves the same underlying facts and the evidence is offered for a purpose other than impeachment.

The Office of the Public Defender is required to represent an indigent respondent in a termination of parental rights proceeding pursuant to the bill.

Definitions

"Nonconsensual sexual conduct" means an act that is prohibited by § 3-303 (first-degree rape), specified provisions of § 3-304 (second-degree rape which involves force or the threat of force or is against a victim who is mentally defective, mentally incapacitated, or physically helpless and the person performing the act knows or reasonably should know of the victim's state), and § 3-323 (incest) of the Criminal Law Article. A "respondent" is the person against whom an action for termination of parental rights is filed in accordance with the bill's provisions.

Current Law: Parents are joint natural guardians of their minor child. A parent is the sole natural guardian of the minor child if the other parent dies, abandons the family, or is incapable of acting as a parent. Statutory provisions specify, for various proceedings,

circumstances in which an individual's commission of specified offenses may impact parental rights.

Adoption and Guardianship

When considering a ruling on a petition of guardianship of a child, a juvenile court has to give primary consideration to the health and safety of the child and consideration to all other relevant factors needed to determine whether terminating a parent's rights is in the child's best interests, including whether the parent has been convicted in any state or in a federal court of a crime of violence against a minor offspring of the parent, the child, or another parent of the child or has been convicted of conspiring or aiding the commission of these crimes. Also, a court may allow adoption without parental consent if the court finds by clear and convincing evidence that the parent has been convicted of the aforementioned crimes.

Custody and Visitation

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. See, e.g., *Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

Notwithstanding the common law standards governing determinations of custody or visitation, statutory provisions 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, the court must 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, statutory provisions also require 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.

Unless good cause for the award of custody or visitation with a child is shown by clear and convincing evidence, a court may not award custody or visitation to a parent who has been found guilty of first- or second-degree murder, as specified. However, if it is in the best interest of the child, a court may approve a supervised visitation arrangement that assures the safety and the psychological, physiological, and emotional well-being of the child.

Background: Statistics regarding the number of women who become pregnant annually as a result of a sexual assault vary widely. The Centers for Disease Control and Prevention reports that rape is a factor in approximately 32,000 pregnancies annually, while the Rape, Abuse, and Incest National Network estimated approximately 17,000 pregnancies from rape in 2012. Studies also vary widely on the outcome of pregnancies resulting from rape. For example, one study found that 26% of women who became pregnant through rape underwent abortions. Of those women who carried their pregnancies to term, 64% raised the children and the remainder of the women placed the children for adoption. Another study found that approximately half of the women who became pregnant by rape underwent abortions.

Maryland common law requires courts to be guided by the best interest of the child in making custody and visitation decisions. However, the U.S. Supreme Court and the Court of Appeals of Maryland 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).) 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, courts have not denied all visitation except under exceptional circumstances, and court decisions have demonstrated that the finding of exceptional circumstances is a high threshold to meet. For example, 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.

According to the National Conference of State Legislatures, approximately 33 states and the District of Columbia have enacted legislation regarding the parental rights of perpetrators of sexual assault. At least 20 of these states allow for the termination of parental rights if the parent was convicted of sexual assault which resulted in the birth of the child; the remaining states and the District of Columbia deny or restrict custody or visitation. While most of these states require a conviction in order for the loss of parental rights to be triggered, several states, including Oklahoma, Vermont, and Wisconsin, do not

require a conviction. Finally, despite the termination of parental rights or restrictions on custody and visitation, in at least 10 states, a man may still be required to pay child support.

State Revenues: Federal grant revenues may increase, potentially significantly, as a result of the bill. A 2015 federal law, the Rape Survivor Child Custody Act, provides additional federal funding for states that have enacted laws to allow the mother of any child who was conceived through rape to seek court-ordered termination of the parental rights of the rapist. The court must be authorized to grant the termination of parental rights upon clear and convincing evidence of rape. The federal law authorized appropriations of \$5.0 million annually in federal fiscal years 2015 through 2019.

Additional Information

Prior Introductions: HB 503 of 2015, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 78, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 411 of 2014 passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, HB 958, received a hearing in the House Judiciary Committee, but no further action was taken. Similar legislation was also introduced in the 2013, 2009, 2008, and 2007 sessions.

Cross File: SB 593 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Centers for Disease Control and Prevention; Rape, Abuse, and Incest National Network; National Conference of State Legislatures; Department of Legislative Services

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