

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1301
Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Family Law - Child Support - Custody and Visitation Determinations

This bill requires the court, in any case in which the court determines child support, to also consider custody and visitation of the child. In addition, in any case in which the Child Support Enforcement Administration (CSEA) establishes a child support obligation, CSEA must refer the parties to the court for purposes of considering custody and visitation of the child.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary, under the assumptions discussed below. CSEA can handle the bill's requirements using existing resources. No material impact on revenues.

Local Effect: The bill does not materially impact the workload of the circuit courts, under the assumptions discussed below.

Small Business Effect: None.

Analysis

Current Law: In a proceeding to establish or modify child support, whether *pendente lite* or permanent, the court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. There is a rebuttable presumption that the amount of child support that would result from the application of the guidelines is the correct amount of support to be awarded. The presumption may be rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case. The current schedule uses the combined monthly adjusted actual income of both parents and the number of children for whom support is required to determine the basic child support obligation.

Courts are not specifically required in statute to consider custody and visitation in any case in which the court determines child support. However, for purposes of determining the proper amount of support, a court must analyze whether the parents have “shared physical custody,” as defined in statutory provisions relating to child support. “Shared physical custody” means that each parent keeps the children overnight for more than 35% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support. The court may base a child support award on shared physical custody solely on the amount of visitation awarded and regardless of whether joint custody has been granted.

Statutory provisions also establish a process by which a child support obligation may be established by CSEA through an affidavit of support. CSEA must set the support obligation amount in accordance with the child support guidelines established in statute.

State/Local Fiscal Effect: For purposes of this fiscal and policy note, it is assumed that the requirement for the courts to “consider” child custody and visitation is simply a clarification of the existing requirements for courts to evaluate the time a child spends with each parent in order to properly apply the child support guidelines. This analysis also assumes that the requirement for CSEA to “refer” parties to the court for purposes of consideration of custody and visitation can be met by providing information to the parties about the custody and visitation process in general, and does not require the parties to file or reopen a case in the circuit court in order to receive services from CSEA.

The Department of Legislative Services advises that if the bill is instead construed to require a court determining child support to “consider” custody and visitation by conducting a full evaluation of any existing custody or visitation order or by requiring the parties to file or reopen a case regarding custody or visitation every time the court determines child support, the impact on the Judiciary could be significant.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 27, 2014
mc/kdm

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