

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 52

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary

Family Law - Custody and Unsupervised Visitation - Child Abuse

This bill requires that if a court finds that a party to a custody or visitation proceeding has abused any child, the court may not grant custody or unsupervised visitation of the subject child to that party unless the court specifically finds that there is no likelihood that the party will abuse the subject child. However, the court may approve a supervised visitation arrangement that assures the safety and psychological, physiological, and emotional well-being of the subject child. The bill also clarifies that a court may not award custody or unsupervised visitation of a subject child to a party if the court has reasonable grounds to believe that the subject child has been abused or neglected by that party, unless the court specifically finds that there is no likelihood of future abuse or neglect of the subject child.

The bill applies only to findings of guilt made on or after the bill's October 1, 2003 effective date.

Fiscal Summary

State Effect: Potential increase in demand for mandatory continuous supervised visitation services and the provision of fee waivers for income-eligible litigants. To the extent that such increased demand leads to an increase in State funding, general fund expenditures would increase.

Local Effect: Potential increase in expenditures to meet demand for mandatory continuous supervised visitation services.

Small Business Effect: Potential increase in revenues for organizations that provide supervised visitation services.

Analysis

Current Law: In any custody or visitation proceeding, if a court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court must make a determination on whether abuse or neglect is likely to occur if custody or visitation rights are granted to that party. Unless the court makes a specific finding that there is no likelihood of further child abuse or neglect by that party, the court shall deny custody or visitation rights to that party. However, a court may approve a supervised visitation arrangement that assures the safety and physiological, psychological, and emotional well-being of the child. In a custody or visitation proceeding, the court must consider 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 in the party's household. If the court finds that the party has committed abuse against any of those individuals, the court must make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the individual who is the victim of abuse.

Background: Maryland common law requires courts to be guided by the best interest of the child in making custody and visitation decisions. 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.

According to the Institute for Family Violence Studies at Florida State University, Maryland is among the majority of states (37 states and the District of Columbia) that have established statutory criteria for judges to consider when ordering supervised visitation. Also, 13 states have enacted statutes to establish supervised visitation programs. Maryland Rule 16-204, adopted by the Maryland Court of Appeals in 1998, established Maryland's Family Services Program, which includes supervised visitation services. According to the Administrative Office of the Courts (AOC), Maryland's supervised visitation program currently operates in Baltimore City and all counties except Howard.

State Expenditures: This bill could increase the use of supervised visitation centers. The bill effectively mandates continuous supervised visitation if a noncustodial parent has been convicted of the specified crimes against a child or child abuse. AOC reports that in fiscal 2002, 890 cases received supervised visitation services. The number of

additional supervised visitation arrangements that would be ordered pursuant to the bill cannot be precisely estimated due to lack of data. Any increase is not expected to be especially significant due to the legal protections already in place. However, currently, supervised visitation is generally for a limited period. Under this bill, supervised visitation would presumably continue until the child reaches the age of majority.

The Family Division of AOC provides grants to most circuit courts in the counties and Baltimore City for family services, including supervised visitation. In fiscal 2002, grants to circuit courts for visitation services totaled \$469,300. The fiscal 2003 budget for visitation services is \$558,860. The fiscal 2004 budget request for this function is \$590,400. Grants to circuit court programs vary based on the caseload and the availability to circuit courts of local facilities and local funding. Generally, the more populous counties receive the larger grants, but that is not always the case. For example, in fiscal 2003, AOC provided a grant of \$121,500 to Montgomery County. Prince George's County, although it has a significant caseload and expects to handle about 300 supervised visitation cases, received a grant of \$30,000. Prince George's County has a network of local organizations that provide visitation services, often at no cost to the county. As a result, the State grant to Prince George's County is smaller than the grants for other jurisdictions. This network is not replicated in other areas of the State. Anne Arundel County, Baltimore City, and Carroll County received grants of between \$60,000 and \$75,000 each for fiscal 2003. Baltimore County received \$48,000 for the same period. In other jurisdictions, the grants generally ranged from \$1,000 to \$20,000 for fiscal 2003.

Enactment of this bill could increase the demand for visitation centers, providers, and funding of supervised visitation services for those noncustodial parents meeting income eligibility requirements. It is assumed that the State would provide additional grants for this purpose on a funds-available basis.

Local Fiscal Effect: Because local jurisdictions charge for supervised visitation services, some or most of the additional expenditures arising out of an increased demand for supervised visitation services could be defrayed. However, new or expanded centers or additional providers may be needed to address a potential increase in demand, which could require local jurisdictions to supplement State funding.

Additional Information

Prior Introductions: This bill was introduced as SB 144 during the 2000 session. It was referred to, but not reported out of, the Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Department of Human Resources; Judiciary (Administrative Office of the Courts); Institute for Family Violence Studies, Florida State University; Department of Legislative Services

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