

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1276
Judiciary

(Delegate Quinter)

Protective Parent Reform Act

This bill alters evidentiary standards, expert witness, evaluation, and disclosure requirements when child abuse or neglect is an issue in a custody or visitation proceeding.

Fiscal Summary

State Effect: General fund expenditures would increase by at least \$400,000 annually to provide funding for additional mental health professionals for custody and mental health evaluations.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	400,000	400,000	400,000	400,000	400,000
Net Effect	(\$400,000)	(\$400,000)	(\$400,000)	(\$400,000)	(\$400,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential significant. Circuit courts, local departments of social services, and law enforcement agencies could be required to increase educational qualifications and retain mental health professionals for completion of investigations and evaluations.

Small Business Effect: Miminal. Mental health professionals who are qualified to conduct custody and mental health evaluations could receive additional income under this bill.

Analysis

Bill Summary: The bill provides that a finding from an investigation by a local department of social services or law enforcement agency into allegations of child abuse or neglect is not admissible in a custody or visitation proceeding if the finding is opposed by a party, unless that party had the opportunity to appeal the finding.

Evidence by an expert that seeks to discredit a party for asserting that the party's child has been subject to abuse or neglect by another party is not admissible unless the evidence is based on concepts and theories generally accepted by the scientific community and supported by admissible facts. Evidence that a parent filed a petition asserting that failure to take away a child from the lawful custodian would have resulted in a clear and present danger to the child is not admissible in a custody or visitation proceeding if the court made a finding that at the time the act was done, failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child.

The bill provides that whenever child abuse or neglect is an issue in a custody proceeding, the court may appoint only a qualified mental health professional with specialized training and experience in child abuse and neglect to provide the mental health services, including custody evaluations. Also, any counsel appointed to represent a child who is competent to testify must disclose the child's preferences and present any evidence disclosed by the child that is relevant to the preferences of the child. Except for emergency proceedings or proceedings relating to allegations of domestic violence, each party and counsel for the child must receive any court-appointed custody evaluation and mental health report at least 15 days before a hearing on custody or visitation.

Current Law: "Lawful custodian" means a person who is authorized to have custody and exercise control over a child who is less than 16 years, and includes a person who is authorized to have custody by court order. "Relative" means a parent, grandparent, brother, sister, aunt, uncle, or individual who was a lawful custodian before an unlawful abduction or taking away of a child from the lawful custodian was awarded physical custody of the child.

If a child is less than 16 years, a relative who knows that another person is the child's lawful custodian may not abduct, take, or carry away the child from the lawful custodian to another place. If a relative acquires lawful possession of a child, the relative may not detain the child for more than 48 hours after the lawful custodian demands the return of the child. A relative may not harbor or hide a child, knowing that possession was obtained by another relative unlawfully, or act as an accessory.

If an individual commits an unlawful abduction or taking away of a child from the lawful custodian, that individual may file a petition in an equity court that: (1) states that at the time the act was done, a failure to do so would have resulted in a clear and present danger to the health, safety, or welfare of the child; and (2) seeks to revise, amend, or clarify the custody order. If the petition is filed within 96 hours of the act, a finding by the court that failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child is a complete defense to any action that alleges an unlawful abduction or taking away of the child from the lawful custodian.

An individual who abducts, takes, or carries away a child less than age 16 from the lawful custodian to another place in Maryland is guilty of a misdemeanor and is subject to maximum penalties of a fine of \$250 or imprisonment for up to 30 days. If an individual abducts, takes, or carries away a child less than age 16 from the lawful custodian to another state for not more than 30 days, the individual is guilty of a felony and is subject to a maximum fine of \$250, and/or imprisonment not exceeding 30 days. An individual who abducts, takes, or carries away a child to another state for more than 30 days is guilty of a felony and is subject to a maximum fine of \$1,000 and/or imprisonment for up to one year. An individual who abducts, takes, or carries away a child to a place outside the U.S. or its territories, the District of Columbia, or the Commonwealth of Puerto Rico, is guilty of a felony and is subject to a maximum fine of \$5,000 and/or imprisonment for up to three years.

State and Local Fiscal Effect: Custody and visitation proceedings in connection with divorce or annulment cases are heard in the circuit courts. Custody evaluations are completed by evaluators who are employed by a court, through contractual arrangements with private practitioners or through local departments of social services that provide evaluations. Most of these evaluators have a social work or mental health background. Mental health evaluations are more likely to be provided through contractual arrangement with private practitioners. The Judiciary's Family Division provides funding to circuit courts for positions and services related to custody and visitation proceedings.

Meeting the requirements of this bill could require additional expenditures of at least \$400,000. There are currently 53 custody evaluators employed by courts at salaries that range from \$50,000 to \$70,000 annually. To augment the qualifications of an evaluator from social worker to psychologist to meet the requirement for a mental health professional, would probably require a \$20,000 increase in salary. The Administrative Office of the Courts advises that at least one evaluator in 20 of the 24 jurisdictions would need to be a mental health professional or psychologist.

Courts would also incur additional costs to contract with mental health professionals (most likely psychologists) to perform custody and mental health evaluations. To meet the bill's requirements for completion of a custody or mental health evaluation at least 15

days before the proceeding, some courts may need to hire additional custody and mental health evaluators.

Local departments of social services and law enforcement agencies may incur additional costs to increase the level of education and expertise of investigative professionals who may be called upon to testify in custody and visitation proceedings.

The Administrative Office of the Courts reports that 1,699 custody evaluations were completed in fiscal 2003. The cost of each of these evaluations ranges from \$200 to \$1,000. Most evaluations cost between \$200 and \$300. In fiscal 2003, 416 mental health evaluations were completed. The cost of these evaluations varies greatly depending on whether psychometric testing is performed and the depth of the evaluation required. A mental health evaluation can cost from \$1,500 to several thousand dollars.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mh/jr

Analysis by: Karen D. Morgan

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