

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 545 (Senator Giannetti)
Judicial Proceedings

Child Custody and Visitation - Child Abduction

This bill specifically prohibits a relative from harboring or hiding a child under the age of 16 from a person whom the relative knows has lawful visitation rights, with the intent of depriving the person of exercising his/her lawful visitation rights.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: This bill prohibits a relative who knows that another person has lawful visitation rights with a child under 16 years old from harboring or hiding the child with the intent of keeping the whereabouts of the child unknown to the person with lawful visitation rights and depriving the person of exercising those rights, or acting as an accessory to this violation.

“Relative” means a parent, grandparent or other ancestor, sibling, aunt, uncle, and anyone who was a lawful custodian prior to the violation of a custody order. A relative who hides a child to prevent court-ordered visitation is subject to the same penalties as a

relative who fails to return a child to the custodial parent following a visit. Current penalty provisions relating to child abduction and removing a child from the State apply.

The alleged violator may file a petition in an equity court that states the action was necessary to protect the child's health, safety, or welfare. The petition may seek to change a visitation order, in addition to a custody order. Notifying the person with lawful visitation rights of the whereabouts of the child within 30 days after the act is a complete defense to any action brought for child abduction.

Current Law: Current prohibitions apply only to a parent or other relative who abducts or does not return a child to the person with legal custody.

A person who harbors a child inside the State in violation of a lawful custody order for longer than 48 hours is guilty of a misdemeanor, subject to a fine not to exceed \$250 or imprisonment not exceeding 30 days. If an abducted child is taken outside the State for not longer than 30 days, the act is a felony, subject to the same penalties. Taking the child outside the State for longer than 30 days is a felony, with maximum penalties of a \$1,000 fine, one year in prison, or both.

A person who violates these provisions may file a petition in an equity court that:

- states 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; and
- 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 brought for a violation.

Background: Abduction of a child by a parent or other relative was traditionally considered a family rather than a criminal matter. A parent who abducted or hid a child in violation of a lawful custody order could be cited for contempt of court, but any penalties imposed were usually not severe.

In the 1960s and 1970s, a rapidly increasing divorce rate led to a correspondingly higher number of children who were subject to custody orders. This in turn led to an increasing number of parental abductions, or "custodial interference" cases. The federal Parental Kidnapping Prevention Act was enacted in 1980 to help custodial parents whose children had been taken across state lines regain custody of those children.

According to The Children's Rights Council of Maryland, the majority of states follow the approach taken in this bill: penalties apply when either parent, or another covered relative, hides a child, whether or not that person has lawful custody.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court. The bill is not expected to result in a significant number of additional convictions.

State Expenditures: General fund expenditures could increase minimally due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month.

Local Revenues: The bill is not expected to materially increase court caseloads. Revenues could increase minimally under the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase due to more people being committed to local detention facilities. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 1216 of the 2004 session. HB 1216 passed the House, as amended, and was heard in the Judicial Proceedings Committee, but received no further action. Another prior introduction, HB 1145 of the 2003 session, was heard in the Judiciary Committee, but received no further action. HB

633 from 1999, HB 941 from 1998, and HB 1027 from 1997 each received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, The Children's Rights Council, Department of Legislative Services

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