

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 435

(Delegate Simmons, *et al.*)

Judiciary

Judicial Proceedings

Family Law - Denial of Custody or Visitation - Murder Convictions

This bill provides that unless good cause is shown by clear and convincing evidence, a court may not grant custody of or visitation with a child to a parent found guilty in this State of first or second degree murder of the other parent of the child, another child of the parent, or any other family member residing in the household of either parent of the child. Custody or visitation also may not be granted to a parent who has been found guilty in another state or federal court of a crime that would be considered first or second degree murder of the above listed individuals, if committed in this State. However, if it is in the best interest of the child, 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 specifies that it applies only to offenses committed on or after the bill's October 1, 2006 effective date.

Fiscal Summary

State Effect: None. The bill's requirements could be handled with existing resources.

Local Effect: None. The bill's requirements could be handled with existing resources.

Small Business Effect: None.

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 must 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: This bill is based on a Massachusetts law ("Lizzie's Law") enacted in 1997.

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.

In the case *In Re: Adoption No. 12612*, 353 Md. 209 (1999), more commonly known as the "Pixley Case," the Court of Appeals held that the law requiring the court to deny custody or visitation unless the court specifically finds no likelihood of further abuse or neglect applied when the abuse (in that case murder) was directed against a sibling of the child whose custody was at issue. The trial court was therefore required to determine "whether abuse or neglect is likely to occur if custody or visitation rights" were granted to the mother, and, unless it found specifically that "there is no likelihood of further child abuse or neglect" by her, the court was required to deny custody and supervised visitation.

According to the latest information available from the Institute for Family Violence Studies at Florida State University, Maryland is among the majority of states that have established statutory criteria for judges to consider when ordering supervised visitation. Also, at least 13 states (including Maryland) 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, Maryland's supervised visitation program currently operates in Baltimore City and all counties except Howard.

State and Local Fiscal Effect: It is not expected that this bill would affect the operations of the Judiciary. During fiscal 2005, the circuit courts handled 84,389 divorce and other domestic relations cases. There is no information available on the number of those cases involving custody of children. However, it is expected that few of the custody cases would involve parents convicted of murder. The parents who are convicted of murder are likely to be confined in a detention facility. Most courts do not provide for supervised access at correctional facilities.

Additional Information

Prior Introductions: This bill is a reintroduction of SB 142 of the 2005 session, as amended. SB 142 passed the Senate, but was given an unfavorable report by the Judiciary Committee.

Cross File: SB 76 (Senator Haines, *et al.*) – Judicial Proceedings.

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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