

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 500
Judiciary

(Delegate Dumais, *et al.*)

Family Law - Denial of Paternity, Custody, and Visitation

This bill establishes that a man must be excluded from legal status as a child's father for purposes of guardianship or adoption, and be denied custody and visitation, if he committed rape in the first or second degrees, incest, or sexual abuse of a minor against the child's mother and the child was conceived as a result of any of these acts.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary: In a petition for guardianship to and adoption through a local department of social services, or for guardianship and adoption by a private agency or an independent adoption, upon motion of the child's mother and after service of the motion in accordance with the Maryland Rules, reasonably calculated to give actual notice and hearing, a court is required to exclude a man as the father of a child under the following circumstances:

- if the court finds by clear and convincing evidence that the man committed rape in the first degree, rape in the second degree (involving vaginal intercourse through the force or threat of force or with a mentally or physically incapacitated

individual), incest, or, if the mother was under the age of 16 at the time of the act, sexual abuse of a minor; or

- if the court finds, by clear and convincing evidence, that the man committed acts in another jurisdiction that would constitute these acts in this State; and
- the child was conceived as a result of the act; and
- the court finds that it is in the child's best interests for the man to be excluded as the child's father.

In making a finding, in addition to any other relevant evidence, the court must consider a prior statement regarding the circumstances of the child's conception made by the child's mother to law enforcement, child protective services, or any other reliable third party. For purposes of service of the motion, the court is prohibited from requiring publication of the mother's name or other personal identifying information. A hearing to exclude a man as the father of the child must be held within 30 days of service of the motion.

If the court excludes a man as father of a child, the court may order the man to provide financial support to the child.

Unless good cause for the award of custody or visitation is shown by clear and convincing evidence, a court may not award custody of or visitation with a child to a parent if the court finds by clear and convincing evidence:

- that the parent committed rape in the first degree, rape in the second degree (involving vaginal intercourse by force or threat of force or with a physically or mentally incapacitated individual), incest, or, if the other parent is under the age of 16 at the time of the act, sexual abuse of a minor against the other parent; or
- that the parent committed acts in another jurisdiction that would constitute these acts in this State; and
- the child was conceived as a result of the act.

If it is in the best interest of the child, the court may approve a supervised visitation arrangement that assures the safety and well-being of the child's other parent or guardian and the child.

In making a finding of denial of custody or visitation, in addition to any other relevant evidence, the court must consider a prior statement about the circumstances of the child's conception made by the child's mother to law enforcement, child protective services, or any other reliable third party. For service of process, the court may not require publication of the other parent's name or personal identifying information. A hearing must be held within 30 days after service of the motion.

Current Law: In petitions for guardianship through or adoption by a local department of social services, private agency guardianship and adoption, and independent guardianship and adoption, unless a court excludes a man as father of a child, a man is the father if any of the following circumstances exist:

- the man was married to the child's mother at the time of the child's conception;
- the man was married to the child's mother at the time of the child's birth;
- the man is named as father on the child's birth certificate and the man has not signed a denial of paternity;
- the man has been adjudicated to be the child's father;
- the man has acknowledged himself, orally or in writing, to be the child's father and the mother agrees; or
- a genetic test indicates the man is the child's biological father.

A petitioner must give a juvenile court notice that a man claims paternity who is not named in the petition and has not been excluded as a father. After a request of a party or claimant and before ruling on a guardianship or adoption petition, the juvenile court must hold a hearing on the issue of paternity.

Unless good cause for the award of custody or visitation with a child is shown by clear and convincing evidence, a court may not award custody or visitation to:

- a parent who has been found guilty of first or second degree murder of the other parent of the child, another child of the parent, or any family member residing in the household of either parent of the child; or

- a parent who has been found guilty of a crime in another jurisdiction that, if committed in Maryland, would constitute the above-mentioned acts.

If it is in the best interest of the child, however, a court may approve a supervised visitation arrangement that assures the safety and the psychological, physiological, and emotional well-being of the child.

When considering a ruling on a petition of guardianship of a child, a juvenile court has to give primary consideration to the health and safety of the child and consideration to all other relevant factors needed to determine whether terminating a parent's rights is in the child's best interests, including whether the parent has been convicted in any state or in a federal court of a crime of violence against a minor offspring of the parent, the child, or another parent of the child or has been convicted of conspiring or aiding the commission of these crimes. Also, a court may allow adoption without parental consent if the court finds by clear and convincing evidence that the parent has been convicted of the aforementioned crimes.

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.

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 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.

According to the latest available information from the National Conference of State Legislatures, New Jersey has a statute similar to this bill that denies a parent fathering a child through rape custody and visitation, but is still required to financially support the minor child. At least 11 states have laws that authorize a court to terminate the parental rights of a person who has conceived a child as a result of rape, incest, or other violent sexual assault (Alaska, Connecticut, Idaho, Kansas, Maine, Missouri, New Mexico, New York, Oklahoma, Pennsylvania, and Wisconsin). Nevada generally denies custody and visitation rights to a father who conceived a child as a result of sexual assault. Illinois, Montana, and South Carolina restrict the biological father's right to be notified and/or to contest an adoption if the child was conceived as a result of criminal sexual abuse or assault.

According to the 2006 *Uniform Crime Report* for Maryland, 1,047 forcible rapes occurred in calendar 2006. From January to September 2007, (the latest information available) 887 forcible rapes were reported. The number of children who were conceived as a result of these offenses is unknown.

State and Local Expenditures: The bill's provisions may require that the courts engage in additional fact finding when considering petitions of guardianship or adoption and the commission of any of these crimes in this bill becomes known to the courts. It is expected, however, that the Judiciary should be able to comply with the provisions of this bill with existing resources.

Additional Information

Prior Introductions: This bill is similar to SB 679/HB 648 of 2007. SB 679 passed the Senate, as amended, and was heard by the House Judiciary Committee, but received no further action. HB 648 was heard by the House Judiciary Committee, but received no further action.

Cross File: SB 516 (Senator Raskin, *et al.*) – Judicial Proceedings.

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

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mll/hlb

Analysis by: Karen D. Morgan

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