

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 385

(Senator Greenip, *et al.*)

Judicial Proceedings

Family Law - Termination of Parental Rights - Child Conceived as the Result of Rape

This bill adds whether the parent has been convicted in any state or any federal court of rape that resulted in the conception of the child to the list of factors that a juvenile court must consider in determining whether to terminate a parent's rights when ruling on a petition for the guardianship of a child. In an independent adoption proceeding, where the parent files a notice of objection, the bill adds whether the court finds, by clear and convincing evidence, that the parent has been convicted in any state or any federal court of rape that resulted in the conception of the child, to the list of factors that authorize a court to allow adoption without parental consent.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Current Law: If a juvenile court finds, by clear and convincing evidence, that termination of parental rights is in a child's best interests, after consideration of factors as required by law, the juvenile court may grant guardianship without parental consent and over the child's objection.

In ruling on a petition for guardianship of a child, a juvenile court must give primary consideration to the health and safety of the child and consideration to all other factors

needed to determine whether termination of parental rights is in the child's best interests. Among the other factors that must be given primary consideration by the court is whether the parent has been convicted, in any state or any federal court, of a violent crime against a minor offspring of the parent, the child, or another parent of the child, or whether the parent aided, abetted, or solicited to commit such a crime.

In an independent adoption proceeding, if the parent affirmatively withholds consent by filing a notice of objection, the court may allow adoption by a petitioner who has exercised care, control, or custody over the prospective adoptee for at least 180 days without the parental consent that otherwise would be required. The court is authorized to allow this type of adoption if it makes certain findings by clear and convincing evidence, including that the parent has been convicted in any state or any federal court of a violent crime against a minor offspring of the parent, the child, or another parent of the child, or has aided, abetted, or solicited to commit such a crime.

Background: The Administrative Office of the Courts reports that circuit courts initiated or opened 127,974 family cases in fiscal 2006. This included the opening or reopening of 3,860 Child in Need of Assistance petitions, 616 juvenile court guardianship petitions, and 522 juvenile court adoption petitions.

According to the State Police, 897 forcible rapes were reported in Maryland from January to September of 2007. According to the 2006 *Uniform Crime Report* for Maryland, 1,047 forcible rapes and 131 attempted rapes occurred in Maryland in calendar 2006. The number of rapes that resulted in the conception of a child is unknown.

Additional Information

Prior Introductions: SB 239 of 2006, an identical bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

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

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mcp/hlb

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