

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 58

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Human Resources)

Judicial Proceedings

Judiciary

Family Law - Termination of Parental Rights

This departmental bill requires that after the consideration of existing statutory factors, a juvenile court, in order to grant guardianship of a child without parental consent and over the child's objections, must also find by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the parent's rights is in the child's best interest.

The bill applies only to petitions pending on or filed on or after the bill's October 1, 2009 effective date.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. In addition, the bill may allow the Judiciary and the Department of Juvenile Services to avoid operational inefficiency by alleviating the need for appellate courts to remand cases to the circuit courts for further proceedings. Such remands can delay a child's permanent placement.

Local Effect: The bill's requirements can be handled with existing budgeted resources. In addition, the bill may alleviate the need for appellate courts to remand cases to the circuit courts for further proceedings.

Small Business Effect: The Department of Human Resources has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

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

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 the termination of parental rights is in a child's best interests. Such factors include:

- an evaluation of any services offered to the parent before the child's placement and the extent to which a local department of social services and parent have fulfilled their obligations under any social services agreement;
- the results of the parent's effort to adjust factors necessary to make it in the child's best interests for the child to return to the parent's home, including the extent to which a parent has maintained regular contact with the child and made contributions to the child's care and support;
- any abuse or neglect of the child or a minor, including any exposure of the child to drugs during the mother's pregnancy; and
- the child's emotional ties to the child's parents and siblings, the likely impact of terminating parental rights on the child's well-being, and the child's adjustment to community, home, placement, and school.

Background: The departmental bill is proposed to eliminate confusion following the decision in *In Re: Adoption of Rashawn Kevon H.*, 402 Md. 477 (2007). In this case, the Court of Appeals recognized an implicit presumption that the interest of a child is best met by continuing the parental relationship. This presumption is based on the fundamental constitutional right of parents to raise their children without undue influence by the State. The presumption may only be rebutted by clear and convincing evidence showing that a parent is either unfit or that exceptional circumstances exist that would make the continued relationship detrimental to the child's best interest. In addition to consideration of the factors currently specified in statute, a court is required to make clear and specific findings based on the evidence with respect to each of the factors. A trial court must determine expressly whether the findings are sufficient either to show that a

parent is unfit or that exceptional circumstances exist that would make continuation of the parental relationship detrimental to the child's best interest.

The *Rashawn* case was remanded in order for the trial court to make and articulate clear and specific findings with respect to each of the relevant statutory factors. A footnote within the *Rashawn* case indicated that the Court of Appeals did not regard the opinion as changing substantive law, but as requiring trial courts to articulate their findings in a different manner than what had previously been permissible. The footnote further stated an intent for that particular aspect of the opinion to be applied prospectively only.

The bill is intended to provide guidance for trial court judges to prevent reversible error. The Department of Human Resources (DHR) advises that the bill is necessary to alleviate delays in permanent placement for children that can result due to the appellate courts remanding cases back to the trial courts for further proceedings. According to DHR, at least 12 cases have been remanded to the juvenile courts since the *In Re: Rashawn* decision. These remands can delay a child's permanent placement by as many as two years.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 14, 2009
ncs/kdm Revised - Senate Third Reader - March 26, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Family Law – Termination of Parental Rights

BILL NUMBER: SB 58

PREPARED BY: Maryland Department of Human Resources

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

☒ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

☐ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.