

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 193

(Senators Brochin and Raskin)

Judicial Proceedings

Family Law - Divorce - Required Mediation

This bill requires that in any divorce action filed in circuit court involving a dispute between the parties relating to child custody or visitation, spousal or child support, or property disposition the circuit court must issue an order requiring the parties to participate in mediation. The court may not order mediation, however, if a party or child represents to the court that there is a genuine issue of physical or sexual abuse of the party or child. Unless the parties agree on a mediator, the court must select an individual who is designated as a mediator under the Maryland Rules. Unless otherwise agreed to by the parties, the costs of mediation must be divided equally between the parties. The bill also authorizes the Court of Appeals to adopt rules to implement the bill.

Fiscal Summary

State Effect: Significant increase in general fund expenditures to pay the costs of mediation for those parties who are indigent.

Local Effect: Significant increase in expenditures to pay the costs of mediation for those parties who are indigent.

Small Business Effect: Potential meaningful to the extent that the bill causes a higher demand for the services of mediators.

Analysis

Current Law: Mediation may be ordered under the Maryland Rules in child custody and visitation disputes or in actions to modify an existing order or judgment as to custody or visitation and in a proceeding for contempt by reason of noncompliance with an order or

judgment governing custody or visitation. The court is required to determine whether (1) mediation of the dispute as to custody or visitation is appropriate and would likely be beneficial to the parties or the child; and (2) a properly qualified mediator is available to mediate that dispute. If a party alleges in good faith that there is a genuine issue of physical or sexual abuse of the party or child, and that, as a result, mediation would be inappropriate, the court may not order mediation.

The Maryland Rules authorize the court to compel, by court order, payment of the compensation, fees and cost of a mediator. The costs may be assessed among parties as the court may direct. Also, in the order for mediation, the court may waive payment of compensation fees and costs.

Mediation is defined by the Maryland Rules as a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of the dispute or issues in the dispute. A mediator may identify issues and options, assist the parties or their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement reached by the parties. While acting as a mediator, the mediator does not engage in arbitration, neutral case evaluation, neutral fact-finding, or other alternative dispute resolution processes and does not recommend the terms of an agreement.

To be designated as a mediator with respect to issues concerning child access, an individual must meet specified qualifications and complete an additional 20 hours of training in family mediation training program.

State and Local Fiscal Effect: Significant increase in general fund expenditures to the extent that the court must order mediation services in cases involving indigent parties. Although the bill specifies that the costs of a court-ordered mediation must be divided equally between the parties, since the bill mandates mediation in all divorce cases involving a family dispute, the Judiciary would likely have to absorb costs for those parties who are indigent.

The Administrative Office of the Courts (AOC) advises that the circuit courts process about 36,000 divorce and annulment cases annually. *For illustrative purposes only*, Legislative Services estimates that about half of those cases would likely have custody or visitation issues for which a court would be required to order mediation under the bill's provisions. Based on the number of cases in which the parties in a divorce action were ordered to attend parenting class and applied for and were eligible for fee waivers, AOC advises that the parties in about 25% of those divorce cases with family disputes would be unable to pay for mediation. If mediators charged a flat fee of no more than

\$500 per case regardless of the number of hours spent per case, general fund expenditures could increase by \$2.3 million.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/kdm

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