

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 908 (Senator Muse)  
Judicial Proceedings

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Family Law - Child Custody - Visitation Rights of Noncustodial Parents

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This bill requires a court to make specified arrangements for visitation for the noncustodial parent, when awarding physical custody of a child to the other parent, under specified circumstances.

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Fiscal Summary

**State Effect:** The bill's changes can be implemented by the Judiciary with existing resources.

**Local Effect:** The bill's changes can be implemented by the circuit courts with existing resources.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** Subject to statutes governing the awarding of custody or visitation when there is evidence of abuse or that the parent murdered another family member, this bill specifies the arrangements that must be made for visitation of a child by a noncustodial parent. The bill requires the noncustodial parent to have visitation every other weekend from Friday night through Monday morning and four weeks during the summer. Visitation must also occur during alternate holidays. Alternatively, the noncustodial parent must have visitation for approximately the same amount of time as described above, according to a schedule determined by the court.

**Current Law/Background:** The court's discretion to determine custody or visitation is limited as provided by law if there is an allegation or evidence of abuse or neglect. If the

court has reasonable grounds to believe that a child has been abused or neglected by a party in a custody proceeding, the court must determine whether the abuse or neglect is likely to occur if custody or visitation rights are granted to the party. Unless the court specifically finds that there is no further likelihood of child abuse or neglect by the party, the court must deny custody or visitation rights to that party except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well being of the child.

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.

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.

If there is a dispute as to visitation or custody, the court must also determine whether mediation of the dispute is appropriate and would be beneficial to the parties and any minor children and if there is a properly qualified mediator available to mediate the dispute. The court must not order mediation if there is a good faith representation of genuine physical or sexual abuse of a party or a child subject to the proceeding.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1052 (Delegate Carter, *et al.*) - Judiciary.

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

**Fiscal Note History:** First Reader - February 28, 2011  
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Analysis by: Karen D. Morgan

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