

Department of Legislative Services  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**

Senate Bill 402 (Senator Madaleno)  
Judicial Proceedings

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**Family Law - De Facto Parent**

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This bill authorizes a court, in a judicial proceeding in which the parentage of a child is at issue, to make a determination as to whether an individual is a “*de facto*” parent of the child on request of the individual, the child, or a parent of the child. A “*de facto*” parent is an individual, including a current or former spouse of a parent of a child, who (1) has undertaken full and permanent responsibilities as a parent of the child and (2) has held himself or herself out as a parent of the child with the agreement of a parent of the child, which may be expressed or implied from the circumstances and conduct of the parties. In addition, the individual must have, over a substantial period of time (1) been treated as a parent by the child; (2) formed a meaningful parental relationship with the child; and (3) lived with the child.

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**Fiscal Summary**

**State Effect:** The bill does not materially impact State finances or operations, including the workload of the Judiciary, as discussed below.

**Local Effect:** The bill does not materially impact local finances or operations, including the workload of the circuit courts, as discussed below.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** An individual asserting *de facto* parental status may initiate or intervene in a judicial proceeding in which the parentage of the child is at issue by filing a verified pleading alleging *prima facie* evidence that the individual is a *de facto* parent. Judicial

proceedings in which the parentage of a child is at issue include proceedings concerning child custody, visitation, or support. If a request has been made for a determination of *de facto* status, the court must determine in a written finding on the record whether the individual is a *de facto* parent of the child. The finding must be (1) on the basis of a preponderance of the evidence; (2) with the burden of proof placed on the party asserting that the individual is a *de facto* parent of the child; and (3) at the earliest practicable opportunity in the proceeding.

An individual who is judicially determined to be a *de facto* parent of a child has all the duties, rights, and obligations of a parent of the child, including those relating to the responsibility for a child's support, care, nurture, welfare, and education, unless the court determines by clear and convincing evidence that a continuing parent-child relationship between the *de facto* parent and the child is not in the child's best interest. In a judicial proceeding in which a parent of a child and an individual who has been judicially determined to be a *de facto* parent dispute the allocation of child custody and visitation, the court must resolve the dispute on the basis of the best interest of the child.

**Current Law:** Parents of a minor child are jointly and severally responsible for the child's support, care, nurture, welfare, and education and have the same powers and duties in relation to the child.

**Background:** A *de facto* parent, or "parent in fact" is used generally to describe a party who claims custody or visitation rights based on the party's relationship with a nonbiological, nonadopted child. See, e.g., *Janice M. v. Margaret K.*, 404 Md. 661 (2008). The Court of Special Appeals addressed *de facto* parents in *S.F. v. M.D.*, 132 Md. App. 90 (2000). The court in *S.F.* held that proof of *de facto* parenthood could be established by demonstrating that the legal parents consented to and fostered the relationship between the third party and the child, the third party lived with the child and performed significant parental functions, and a parent-child bond was formed. On a finding of *de facto* parenthood, visitation could be granted to the *de facto* parent under the best interest of the child standard, without the need to show exceptional circumstances or that the legal parent is unfit.

However, later cases reiterated that any third party seeking custody or visitation must first demonstrate that the parent is unfit or show exceptional circumstances and then that visitation or custody is in the best interest of the child. See, e.g. *Koshko v. Haining*, 398 Md. 404, 441 (2007). The Court of Appeals recently addressed *de facto* parents in *Janice M.* In *Janice M.*, one member of a committed same-sex relationship of 18 years sought custody and/or visitation with the child adopted by the other member of the relationship. The parties lived together during most of the child's life and divided the responsibilities related to her caretaking. After the parties separated, the adoptive mother began placing more restrictions on visitation and eventually denied all access to the child,

causing the other party to file for custody or visitation. The trial court, relying on the *S.F.* decision, recognized the plaintiff as a *de facto* parent and allowed visitation. The Court of Special Appeals affirmed. However, the Court of Appeals reversed, holding that *de facto* parenthood is not recognized in Maryland; therefore, even individuals who claim a *de facto* parent status are ineligible for custody or visitation without a threshold showing of parental unfitness or exceptional circumstances. The court also held that although a finding that one meets requirements that would otherwise give an individual *de facto* parent status, if such status was recognized, is a factor to be considered in evaluating whether exceptional circumstances exist, it is not determinative as a matter of law.

**State/Local Fiscal Effect:** Because the bill establishes that a *de facto* parent has a duty to support the child, special fund revenues may increase minimally to the extent that the bill allows for child support payments to Temporary Cash Assistance (TCA) recipients. Recipients are required to assign support payments equally to the State and federal government as partial reimbursement for TCA payments made on behalf of the children of the obligor. State and local expenditures may minimally decrease to the extent that the requirement for a *de facto* parent to provide support for a child impacts eligibility to receive public benefits. However, any such impact is not anticipated to materially impact State or local finances.

In addition, the bill does not materially impact the workload of the Judiciary or the circuit courts.

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### Additional Information

**Prior Introductions:** SB 600 of 2010, a similar bill relating to *de facto* parents, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1241, received a hearing in the House Judiciary Committee, but was subsequently withdrawn.

**Cross File:** HB 577 (Delegate Valentino-Smith, *et al.*) - Judiciary.

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

**Fiscal Note History:** First Reader - February 16, 2015  
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