

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 78

(Senator Raskin, *et al.*)

Judicial Proceedings

Rape Survivor Family Protection Act

This bill establishes that a man must be excluded from legal status as a child's father for purposes of guardianship or adoption, and be denied custody and visitation, if he committed rape in the first or second degrees, incest, or sexual abuse of a minor against the child's mother and the child was conceived as a result of any of these acts.

Fiscal Summary

State Effect: The bill's provisions do not materially affect the workload of the Judiciary.

Local Effect: The bill's provisions do not materially affect the workload of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: In a petition for (1) guardianship to and adoption through a local department of social services; (2) guardianship and adoption by a private agency; or (3) an independent adoption, upon motion of the child's mother and after service of the motion in accordance with the Maryland Rules, reasonably calculated to give actual notice, and a hearing, a court is required to exclude a man as the father of a child under the following circumstances:

- if the court finds by clear and convincing evidence that the man committed rape in the first degree, rape in the second degree (involving vaginal intercourse through the force or threat of force or with a mentally or physically incapacitated individual),

incest, or, if the mother was younger than age 16 at the time of the act, sexual abuse of a minor; or

- if the court finds, by clear and convincing evidence, that the man committed acts in another jurisdiction that would constitute these acts in this State; and
- the child was conceived as a result of the act; and
- the court finds that it is in the child's best interests for the man to be excluded as the child's father.

In making a finding, in addition to any other relevant evidence, the court must consider a prior statement regarding the circumstances of the child's conception made by the child's mother to law enforcement, child protective services, or any other reliable third party. For purposes of service of the motion, the court is prohibited from requiring publication of the mother's name or other personal identifying information. A hearing to exclude a man as the father of the child must be held within 30 days of service of the motion.

If the court excludes a man as father of a child, the court may order the man to provide financial support to the child.

Unless good cause for the award of custody or visitation is shown by clear and convincing evidence, a court may not award custody of or visitation with a child to a parent if the court finds by clear and convincing evidence:

- that the parent committed rape in the first degree, rape in the second degree (involving vaginal intercourse by force or threat of force or with a physically or mentally incapacitated individual), incest, or, if the other parent is younger than age 16 at the time of the act, sexual abuse of a minor against the other parent; or
- that the parent committed acts in another jurisdiction that would constitute these acts in this State; and
- the child was conceived as a result of the act.

If it is in the best interest of the child, the court may approve a supervised visitation arrangement that assures the safety and well-being of the child's other parent or guardian and the child.

In making a finding of denial of custody or visitation, in addition to any other relevant evidence, the court must consider a prior statement about the circumstances of the child's

conception made by the child's mother to law enforcement, child protective services, or any other reliable third party. For service of process, the court may not require publication of the other parent's name or personal identifying information. A hearing must be held within 30 days after service of the motion.

Current Law:

Adoption and Guardianship

In petitions for (1) guardianship through or adoption by a local department of social services; (2) private agency guardianship and adoption; and (3) independent guardianship and adoption, unless a court excludes a man as father of a child, a man is the father if any of the following circumstances exist:

- the man was married to the child's mother at the time of the child's conception;
- the man was married to the child's mother at the time of the child's birth;
- the man is named as father on the child's birth certificate and the man has not signed a denial of paternity;
- the child's mother has named the man as the child's father and the man has not signed a denial of paternity;
- the man has been adjudicated to be the child's father;
- the man has acknowledged himself, orally or in writing, to be the child's father and the mother agrees; or
- a genetic test indicates the man is the child's biological father.

A petitioner must give a juvenile court notice that a man claims paternity who is not named in the petition and has not been excluded as a father. After a request of a party or claimant and before ruling on a guardianship or adoption petition, the juvenile court must hold a hearing on the issue of paternity.

When considering a ruling on a petition of guardianship of a child, a juvenile court has to give primary consideration to the health and safety of the child and consideration to all other relevant factors needed to determine whether terminating a parent's rights is in the child's best interests, including whether the parent has been convicted in any state or in a federal court of a crime of violence against a minor offspring of the parent, the child, or

another parent of the child or has been convicted of conspiring or aiding the commission of these crimes. Also, a court may allow adoption without parental consent if the court finds by clear and convincing evidence that the parent has been convicted of the aforementioned crimes.

Custody and Visitation

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.

Background: Statistics regarding the number of women who become pregnant annually as a result of a sexual assault vary widely. The Centers for Disease Control and Prevention reports that rape is a factor in approximately 32,000 pregnancies annually, while the Rape, Abuse, and Incest National Network estimated approximately 17,000 pregnancies from rape in 2012. Studies also vary widely on the outcome of pregnancies resulting from rape. For example, one study found that 26% of women who became pregnant through rape underwent abortions. Of those women who carried their pregnancies to term, 64% raised the children and the remainder of the women placed the children for adoption. Another study found that approximately half of the women who became pregnant by rape underwent abortions.

Maryland common law requires courts to be guided by the best interest of the child in making custody and visitation decisions. However, the U.S. Supreme Court and the Court of Appeals of Maryland have also recognized that parents have a fundamental right to govern the care, custody, and control of their children without state interference, unless there is a showing of parental unfitness or the existence of exceptional circumstances. (*See, e.g. Troxel v. Granville*, 530 U.S. 57 (2000), *Koshko v. Haining*, 398 Md. 404 (2007), and *Janice M. v. Margaret K.*, 404 Md. 661 (2008).) Although 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, courts have not denied all visitation except under exceptional

circumstances, and court decisions have demonstrated that the finding of exceptional circumstances is a high threshold to meet. For example, 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.

Approximately three-fourths of the states have specific statutory provisions that limit some or all of the rights of a parent who conceived a child through a forced sexual act. Of these states, at least 20 allow or require the termination of all parental rights if a child is conceived by rape. At least 10 of the states provide partial restrictions on parental rights through laws establishing that a man's consent is not needed in order to proceed with the adoption of a child who was conceived by rape, and at least 7 states establish limitations on custody and/or visitation. While most of the states require a conviction in order for the loss of parental rights to be triggered, several states, including Oklahoma, Pennsylvania, Vermont, and Wisconsin, do not require a conviction. Finally, despite the termination of parental rights, in at least 6 states, a man may still be required to pay child support.

According to the *2013 Uniform Crime Report* for Maryland, 1,169 rapes, including attempted rapes, were reported in calendar 2013. The number of children who were conceived as a result of these offenses is unknown.

Additional Information

Prior Introductions: SB 411 of 2014 passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, HB 958, received a hearing in the House Judiciary Committee, but no further action was taken. SB 620 of 2013 passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, HB 715, received a hearing in the House Judiciary Committee, but no further action was taken. SB 815 of 2009 was withdrawn prior to a hearing. In addition, similar legislation was introduced in the 2008 and 2007 sessions.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of State Police; Centers for Disease Control and Prevention; Rape, Abuse, and Incest National Network; Department of Legislative Services

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