

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 567

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or
Domestic Violence Allegations

This bill establishes the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations, which is to be staffed by the Department of Legislative Services (DLS). By December 1, 2019, the workgroup must submit an interim report to the Governor and the General Assembly; a final report is due by June 1, 2020. **The bill takes effect June 1, 2019, and terminates November 30, 2020.**

Fiscal Summary

State Effect: It is assumed that expense reimbursements and staffing costs for DLS can be absorbed within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The workgroup must (1) study State child custody processes for when child abuse or domestic violence allegations are made during court proceedings; (2) study available science and best practices pertaining to children in traumatic situations, including trauma-informed decision making; and (3) make recommendations about how State courts could incorporate in court proceedings the latest science regarding the safety and well-being of children and other victims of domestic violence.

The workgroup is to be chaired by the Secretary of State, or the Secretary's designee. Members of the workgroup may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law/Background: Maryland courts resolve child custody disputes based on a determination of "what is in the child's best interests." In a custody dispute between the child's parents, the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments. The criteria for judicial determination include, but are not limited to, (1) the fitness of the parents; (2) the character and reputation of the parents; (3) the desire of the natural parents and any agreements between them; (4) the potential for maintaining natural family relations; (5) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment; and (6) the age, health, and sex of the child. *Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

In addition to the factors set forth in the *Sanders* decision, a court considering an award of joint custody must also examine a range of factors particularly relevant to a determination of joint custody, including (1) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare; (2) the willingness of the parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) the sincerity of the parents' request; and (7) any other factors the court considers appropriate. *Taylor v. Taylor*, 306 Md. 290 (1986). The *Taylor* Court emphasized that the single most important factor in the determination of whether an award of joint legal custody is appropriate is the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare. *Taylor* at 305.

Statutory provisions limit the court's discretion to determine custody or visitation if there is 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 or visitation proceeding, the court must determine whether 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 likelihood of further child abuse or neglect by the party, the court must deny custody or visitation rights to the party, except that the court may approve a supervised visitation arrangement that assures the child's safety and the physiological, psychological, and emotional well-being of the child.

Similarly, in a custody or visitation proceeding, statutory provisions also require the court to consider evidence of abuse by a party against the other parent of the party's child, the party's spouse, or any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation proceeding. If the court finds that the party has committed abuse against any of these individuals, it must make

arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of the abuse.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Legislative Services

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