

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 638

(Senator Smith)

Judicial Proceedings

Judiciary

Child Support - Shared Physical Custody

This bill establishes a formula for the calculation of a child support obligation under the child support guidelines when a parent with shared physical custody keeps the child or children overnight for more than 25% but less than 30% of the year. The bill alters the threshold of overnight stays, from more than 35% to more than 25%, that confers the status of “shared physical custody” for purposes of determining a child support obligation. The bill has prospective application and only applies to cases filed on or after the October 1, 2019 effective date.

Fiscal Summary

State Effect: The bill does not materially affect the workload of the Judiciary. Any programming changes for the Department of Human Services (DHS) can be handled with existing budgeted resources. It is assumed that any effect on special fund revenues is not material.

Local Effect: The bill does not materially affect the workload of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: A “shared physical custody adjustment” is the adjustment made to a theoretical adjusted basic child support obligation in a shared physical custody case when a parent keeps the child or children overnight for more than 25% (at least 92 overnights), but less than 30% (not more than 109 overnights) of the year. When a parent with shared physical custody keeps the child or children overnight for more than 25% but less than

30% of the year, the parent's theoretical basic child support obligation must be increased by the amount of the shared physical custody adjustment, as specified.

Current Law: In a proceeding to establish or modify child support, whether *pendent-lite* or permanent, the court is required to use the child support guidelines. The basic child support obligation is established in accordance with a schedule provided in statute. The current schedule uses the combined monthly adjusted actual income of both parents and the number of children for whom support is required to determine the basic child support obligation. The basic child support obligation is divided between the parents in proportion to their adjusted actual incomes.

“Shared physical custody” means that each parent keeps the child or children overnight for more than 35% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support. The court may base a child support award on shared physical custody solely on the amount of visitation awarded and regardless of whether joint custody has been granted.

In cases of shared physical custody, the adjusted basic child support obligation is first divided between the parents in proportion to their respective adjusted actual incomes. Each parent's share of the adjusted basic child support obligation must be multiplied by the percentage of time the child or children spend with the other parent to determine the theoretical basic child support obligation owed to the other parent. The parent owing the greater amount owes the difference as child support.

Background: Federal regulations require states, as a condition of receiving Title IV-D funds, to review their child support guidelines at least once every four years; the 2016 review was completed in 2016. After the review noted areas of potential improvement, the Child Support Guidelines Advisory Committee, coordinated by DHS, began meeting in 2017 to further review the guidelines in light of the best interests of the State's children and families. Multiple subcommittees were formed to facilitate the committee's work.

The Cliff Effect Subcommittee was tasked with examining the precipitous drop in the calculated child support obligation when shared physical custody by the support obligor reaches 35% of overnights. The subcommittee noted that because one or two extra overnights per year results in a significant change in the support obligation, conflict often arises between parents during custody and child support cases. Furthermore, the method of allocation inaccurately assumes that expenses are the same for parents with varying amounts of parenting time/overnight visits. The subcommittee instead recommended an assumption of a linear rate of increased child expenses for the noncustodial parent as the number of overnights increase; the bill reflects this recommendation.

State Revenues: Temporary Cash Assistance (TCA) recipients must assign their support rights to the State and federal governments as partial reimbursement for payments made on behalf of the children of the obligor. As a result, TCA child support collections are distributed 50% to the State and 50% to the federal government. Accordingly, special fund revenues are impacted to the extent that child support ordered and collected in these cases differs from what would have been ordered and collected under current law. Any impact on child support collections involving TCA recipients cannot be reliably quantified but is not expected to materially impact State finances.

Additional Information

Prior Introductions: None.

Cross File: HB 731 (Delegates Dumais and Malone) - Judiciary.

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

Fiscal Note History: First Reader - March 5, 2019
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