

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 775 (Senator Lee)
Judicial Proceedings

Family Law - Child Custody and Visitation - Abuse

This bill establishes a rebuttable presumption that it is not in the best interest of a child for a court to grant sole or joint legal or physical custody to a party who has committed abuse against the other parent of the party's child, the party's spouse, or any child residing within the party's household. The bill also requires the court to (1) impose one or more specified conditions on arrangements of custody or visitation approved by the court under certain circumstances; (2) if granting custody to a party who has committed abuse, as specified, state the reasons for the rebuttal of the presumption as established by the bill; and (3) take specified actions on a finding that both parties have committed abuse.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations and finances, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government operations and finances, as discussed below.

Small Business Effect: Minimal.

Analysis

Current Law/Bill Summary: Under current law, in a custody or visitation proceeding, the court must 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.

The bill establishes that if the court approves an arrangement for custody or visitation under the above circumstances, it must impose one or more of the following conditions, as appropriate:

- mandate that the exchange of the child occur in a protected setting or require supervised exchanges or visitation in the presence of an appropriate third-party who agrees to assume responsibility, is assigned by the court, and is accountable to the court;
- require the abusive party to pay the costs of supervised visitations;
- require the abusive party to attend and complete an appropriate abuser intervention program as a condition of visitation;
- require the abusive party to abstain from alcohol or other controlled substances during, and for a period of time before, each visitation;
- prohibit an abusive party from having overnight visitation;
- require the abusive party to post a bond for the return and safety of the child; and
- any other condition that the court determines is necessary for the safety and well-being of the child and the safety of the victim of the abuse.

If the court grants sole or joint legal or physical custody to a party who has committed abuse against the other parent of the party's child, the party's spouse, or any child residing within the party's household, the court must state the reasons for the rebuttal of the presumption as established in the bill.

If the court finds that both parties have committed abuse, the court must attempt to determine whether one party was the primary physical aggressor and apply the rebuttable presumption against that party. To determine if a party is a primary physical aggressor, the court must consider relevant factors, including (1) the relative severity of injuries; (2) the likelihood that a party may commit future abuse; (3) whether any acts of domestic violence were committed in self-defense; and (4) the history of domestic violence between the parties and whether one party has exhibited coercive control toward the other party.

Current law also specifies requirements for custody or visitation if the court has reasonable grounds to believe that *a child* has been abused or neglected by a party to the proceeding. In such circumstances, 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 that party. However, the court is authorized to approve a

supervised visitation arrangement that assures the safety and physiological, psychological, and emotional well-being of the child. These provisions are unchanged by the bill.

State/Local Fiscal Effect: The bill may increase referrals to supervised visitation/monitored exchange programs and abuser intervention programs. The Judiciary notes that if parties qualify for and are granted a fee waiver, the Judiciary covers costs associated with these types of court-ordered services. Accordingly, general fund expenditures may increase to the extent that the bill increases referrals for services. Some circuit courts operate their own supervised visitation/monitored exchange centers, and *may* experience minimal increased fee revenues from additional referrals.

However, because courts already impose these conditions in many custody cases under the general requirement to make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of the abuse, any impact exclusively attributable to the bill is not anticipated to be material. The bill is not otherwise anticipated to materially affect the workload of the circuit courts.

Additional Comments: The bill implements a recommendation of the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations. The workgroup, chaired by the Secretary of State, submitted its final [report](#) in September 2020.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 4, 2021
rh/lgc

Analysis by: Jennifer K. Botts

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