

SENATE BILL 711

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2004 Regular Session
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By: **Senators Jacobs and Giannetti**
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Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
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CHAPTER 304

1 AN ACT concerning

2 **Child Welfare Services - Children in Out-of-Home Placement**

3 FOR the purpose of ~~declaring the intent of the General Assembly that certain funds~~
4 ~~be available for certain services when a parent relinquishes care of the parent's~~
5 ~~minor child to others; prohibiting the Department of Human Resources from~~
6 ~~placing children committed to the Department in group homes or residential~~
7 ~~facilities that accept children from other State agencies after a certain date;~~
8 ~~requiring the Department to consider certain criteria before issuing certain~~
9 ~~licenses;~~ requiring local departments of social services to consider certain
10 criteria in developing a permanency plan for a child in an out-of-home
11 placement; ~~altering certain goals of a local board of review for minor children in~~
12 ~~out of home placement;~~ altering certain recommendations that may be made by
13 a local board; requiring the Social Services Administration to adopt certain
14 regulations; requiring the Special Secretary for Children, Youth, and Families,
15 in consultation with the Department of Human Resources, the Department of
16 Health and Mental Hygiene, and the Department of Juvenile Services, to
17 conduct a certain study, develop a certain plan, and make a certain report on or
18 before a certain date; defining certain terms; making the provisions of this Act
19 severable; and generally relating to child welfare services and children in
20 out-of-home placement.

21 BY repealing and reenacting, with amendments,
22 Article - Family Law
23 Section ~~5-502, 5-525, 5-544, 5-525~~ and 5-545
24 Annotated Code of Maryland
25 (1999 Replacement Volume and 2003 Supplement)

26 ~~BY adding to~~

1 Article—Family Law
2 Section ~~5-505 and 5-510.1~~
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2003 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - Family Law**

8 ~~5-502.~~

9 (a) The General Assembly declares that:

10 (1) ~~minor children are not capable of protecting themselves; [and]~~

11 (2) ~~when a parent has relinquished the care of the parent's minor child to~~
12 ~~others, there is a possibility of certain risks to the child that require compensating~~
13 ~~measures; AND~~

14 (3) ~~WHEN A PARENT HAS RELINQUISHED THE CARE OF THE PARENT'S~~
15 ~~MINOR CHILD TO OTHERS, THERE SHALL BE SUFFICIENT FUNDS AVAILABLE FROM~~
16 ~~THE APPROPRIATE GOVERNMENT AGENCY TO PROVIDE THE CHILD WITH ALL~~
17 ~~NECESSARY SERVICES.~~

18 (b) It is the policy of this State:

19 (1) ~~to protect minor children whose care has been relinquished to others~~
20 ~~by the children's parent;~~

21 (2) ~~to resolve doubts in favor of the child when there is a conflict between~~
22 ~~the interests of a minor child and the interests of an adult; and~~

23 (3) ~~to encourage the development of day care services for minor children~~
24 ~~in a safe, healthy, and homelike environment.~~

25 ~~5-505.~~

26 ~~AFTER JANUARY 1, 2006, A CHILD COMMITTED TO THE DEPARTMENT MAY NOT~~
27 ~~BE PLACED IN A GROUP HOME OR RESIDENTIAL FACILITY THAT ALSO ACCEPTS~~
28 ~~CHILDREN FROM ANY OTHER UNIT OF STATE GOVERNMENT.~~

29 ~~5-510.1.~~

30 ~~PRIOR TO ISSUING A LICENSE FOR A CHILD CARE HOME OR A LICENSE FOR A~~
31 ~~CHILD CARE INSTITUTION, THE DEPARTMENT SHALL CONSIDER THE LOCATION OF~~
32 ~~THE CHILD CARE HOME OR CHILD CARE INSTITUTION TO AVOID OVERSATURATION~~
33 ~~OF CHILD CARE HOMES OR CHILD CARE INSTITUTIONS IN LOCAL JURISDICTIONS IN~~
34 ~~THE STATE.~~

1 5-525.

2 (a) (1) The Administration shall establish a program of out-of-home
3 placement for minor children:

4 (i) who are placed in the custody of a local department, for a period
5 of not more than 180 days, by a parent or legal guardian under a voluntary placement
6 agreement;

7 (ii) who are abused, abandoned, neglected, or dependent, if a
8 juvenile court:

9 1. has determined that continued residence in the child's
10 home is contrary to the child's welfare; and

11 2. has committed the child to the custody or guardianship of
12 a local department; or

13 (iii) who, with the approval of the Administration, are placed in an
14 out-of-home placement by a local department under a voluntary placement
15 agreement subject to paragraph (2) of this subsection.

16 (2) (i) A local department may not seek legal custody of a child under
17 a voluntary placement agreement if the child has a developmental disability or a
18 mental illness and the purpose of the voluntary placement agreement is to obtain
19 treatment or care related to the child's disability that the parent is unable to provide.

20 (ii) A child described in subparagraph (i) of this paragraph may
21 remain in an out-of-home placement under a voluntary placement agreement for
22 more than 180 days if the child's disability necessitates care or treatment in the
23 out-of-home placement and a juvenile court makes a finding that continuation of the
24 placement is in the best interests of the child.

25 (b) In establishing the out-of-home placement program the Administration
26 shall:

27 (1) provide time-limited family reunification services to a child placed in
28 an out-of-home placement and to the parents or guardian of the child, in order to
29 facilitate the child's safe and appropriate reunification within a timely manner; and

30 (2) concurrently develop and implement a permanency plan that is in the
31 best interests of the child.

32 (c) (1) The local department shall provide 24-hour a day care and
33 supportive services for a child who is committed to its custody or guardianship in an
34 out-of-home placement on a short-term basis or placed in accordance with a
35 voluntary placement agreement.

36 (2) (i) A child may not be committed to the custody or guardianship of
37 a local department and placed in an out-of-home placement solely because the child's

1 parent or guardian lacks shelter or solely because the child's parents are financially
2 unable to provide treatment or care for a child with a developmental disability or
3 mental illness.

4 (ii) The local department shall make appropriate referrals to
5 emergency shelter services and other services for the homeless family with a child
6 which lacks shelter.

7 (d) (1) Unless a court orders that reasonable efforts are not required under §
8 3-812 of the Courts Article or § 5-313 of this title, reasonable efforts shall be made to
9 preserve and reunify families:

10 (i) prior to the placement of a child in an out-of-home placement,
11 to prevent or eliminate the need for removing the child from the child's home; and

12 (ii) to make it possible for a child to safely return to the child's
13 home.

14 (2) In determining the reasonable efforts to be made and in making the
15 reasonable efforts described under paragraph (1) of this subsection, the child's safety
16 and health shall be the primary concern.

17 (3) Reasonable efforts to place a child for adoption or with a legal
18 guardian may be made concurrently with the reasonable efforts described under
19 paragraph (1) of this subsection.

20 (4) If continuation of reasonable efforts to reunify the child with the
21 child's parents or guardian is determined to be inconsistent with the permanency
22 plan for the child, reasonable efforts shall be made to place the child in a timely
23 manner in accordance with the permanency plan and to complete the steps to finalize
24 the permanent placement of the child.

25 (e) (1) In developing a permanency plan for a child in an out-of-home
26 placement, the local department of social services shall give primary consideration to
27 the best interests of the child. The local department shall consider the following
28 factors in determining the permanency plan that is in the best interests of the child:

29 (i) the child's ability to be safe and healthy in the home of the
30 child's parent;

31 (ii) the child's attachment and emotional ties to the child's natural
32 parents and siblings;

33 (iii) the child's emotional attachment to the child's current caregiver
34 and the caregiver's family;

35 (iv) the length of time the child has resided with the current
36 caregiver;

1 (v) the potential emotional, developmental, and educational harm
2 to the child if moved from the child's current placement; and

3 (vi) the potential harm to the child by remaining in State custody
4 for an excessive period of time.

5 (2) To the extent consistent with the best interests of the child in an
6 out-of-home placement, the local department shall consider the following
7 permanency plans, in descending order of priority:

8 (i) returning the child to the child's parent or guardian, unless the
9 department is the guardian;

10 (ii) placing the child with relatives to whom adoption,
11 guardianship, or care and custody, in descending order of priority, are planned to be
12 granted;

13 (iii) adoption in the following descending order of priority:

14 1. by a current foster parent with whom the child has resided
15 continually for at least the 12 months prior to developing the permanency plan or for
16 a sufficient length of time to have established positive relationships and family ties;
17 or

18 2. by another approved adoptive family;

19 (iv) placing the child in a court approved permanent foster home
20 with a specific caregiver;

21 (v) an independent living arrangement; or

22 (vi) long-term foster care.

23 (3) SUBJECT TO PARAGRAPHS (1) AND (2) OF THIS SUBSECTION AND TO
24 THE EXTENT CONSISTENT WITH THE BEST INTERESTS OF A CHILD IN AN
25 OUT-OF-HOME PLACEMENT, IN DETERMINING A PERMANENCY PLAN, THE LOCAL
26 DEPARTMENT SHALL CONSIDER THE FOLLOWING IN DESCENDING ORDER OF
27 PRIORITY:

28 (I) PLACEMENT OF THE CHILD IN THE LOCAL JURISDICTION
29 WHERE THE CHILD'S PARENT OR GUARDIAN RESIDES; OR

30 (II) IF THE LOCAL DEPARTMENT FINDS, BASED ON A COMPELLING
31 REASON, THAT PLACEMENT OF THE CHILD AS DESCRIBED IN ITEM (I) OF THIS
32 PARAGRAPH IS NOT IN THE BEST INTEREST OF THE CHILD, PLACEMENT OF THE
33 CHILD IN ANOTHER JURISDICTION IN THE STATE AFTER CONSIDERING:

34 1. ~~THE NUMBER OF OTHER CHILDREN IN OUT-OF-HOME~~
35 ~~PLACEMENTS IN PROXIMITY TO THE CURRENT OR PROPOSED OUT-OF-HOME~~
36 ~~PLACEMENT;~~

1 (3) SPECIFY THE COMPELLING REASONS FOR PLACING A CHILD IN A
2 LOCAL JURISDICTION OTHER THAN THE LOCAL JURISDICTION WHERE THE CHILD'S
3 PARENT OR GUARDIAN RESIDES, UNDER SUBSECTION (E)(3)(II) OF THIS SECTION; AND

4 [(3)] (4) require the local department to make appropriate referrals to
5 emergency shelter and other services for families with children who lack shelter.

6 ~~5-544.~~

7 ~~The goals of each local board are:~~

8 (1) ~~subject to § 5-545 of this subtitle, as to minor children who have~~
9 ~~resided in out of home placement under the jurisdiction of the local department for~~
10 ~~more than 6 months:~~

11 (i) ~~to review the cases every 6 months to determine what efforts~~
12 ~~have been made to acquire permanent and stable placement for these children; [and]~~

13 (ii) ~~to encourage and facilitate the return of each of these children~~
14 ~~to the child's parent or, on determining that return of a child to the child's parent is~~
15 ~~not in the best interests of the child, to encourage placement of the child with the~~
16 ~~child's relatives, provided the placement has legal status, or if neither measure is in~~
17 ~~the best interests of the child, to encourage efforts at adoption of the child; AND~~

18 (III) ~~IF THE CHILD RESIDES IN AN OUT OF HOME PLACEMENT IN A~~
19 ~~LOCAL JURISDICTION WHERE THE CHILD'S PARENT OR GUARDIAN DOES NOT~~
20 ~~RESIDE, ON DETERMINING THAT THE RETURN OF THE CHILD TO THE CHILD'S~~
21 ~~PARENT OR GUARDIAN IS NOT IN THE BEST INTERESTS OF THE CHILD, TO~~
22 ~~ENCOURAGE AND FACILITATE THE PLACEMENT OF THE CHILD IN AN OUT OF HOME~~
23 ~~PLACEMENT IN THE CHILD'S LOCAL JURISDICTION OF ORIGIN, WHEN APPROPRIATE;~~

24 (2) ~~to encourage all possible efforts for permanent foster care or kinship~~
25 ~~care or guardianship for minor children for whom return to a parent or adoption is not~~
26 ~~feasible; and~~

27 (3) ~~to report to the juvenile court on the status of efforts to secure~~
28 ~~permanent homes for minor children.~~

29 ~~5-545.~~

30 (a) Each local board shall review children in out-of-home placement in
31 accordance with local plans approved by the State Board and the Secretary of Human
32 Resources.

33 (b) Each local board shall report in writing to the juvenile court and the local
34 department on each minor child whose case is reviewed by the local board.

35 (c) In the report, the local board may recommend, as being in the best interest
36 of the minor child:

1 (1) that the child be returned to the parent or legal guardian;

2 (2) that the child continue to be placed outside the home and that the
3 present placement plan is appropriate to the child's needs;

4 (3) that the child continue to be placed outside the home, but that the
5 present placement plan is inappropriate to the child's needs; [or]

6 (4) THAT THE CHILD CONTINUE TO BE PLACED OUTSIDE THE HOME,
7 BUT THAT THE CHILD BE PLACED OUTSIDE THE HOME IN THE LOCAL JURISDICTION
8 OF ORIGIN, IF APPROPRIATE;

9 (5) THAT IT IS IN THE BEST INTEREST OF A CHILD TO CONTINUE TO BE
10 PLACED IN ANOTHER LOCAL JURISDICTION IN THE STATE, AFTER CONSIDERING:

11 ~~1. THE NUMBER OF OTHER CHILDREN IN OUT OF HOME~~
12 ~~PLACEMENTS IN PROXIMITY TO THE CURRENT OR PROPOSED OUT OF HOME~~
13 ~~PLACEMENT;~~

14 ~~2. THE EFFECT ON THE LOCAL SCHOOL SYSTEM;~~

15 ~~3. 1. THE AVAILABILITY OF RESOURCES TO PROVIDE~~
16 ~~NECESSARY SERVICES TO THE CHILD; AND~~

17 ~~4. 2. THE ACCESSIBILITY TO FAMILY TREATMENT, IF~~
18 ~~APPROPRIATE; AND~~

19 ~~3. THE EFFECT ON THE LOCAL SCHOOL SYSTEM; OR~~

20 [(4)] (6) that proceedings be initiated to terminate the rights of the
21 parent as to the child so that the child may be eligible for adoption.

22 SECTION 2. AND BE IT FURTHER ENACTED, That:

23 (a) The Special Secretary for Children, Youth, and Families, in consultation
24 with the Department of Human Resources, the Department of Health and Mental
25 Hygiene, and the Department of Juvenile Services, shall:

26 (1) conduct a study of out-of-home placements to determine:

27 (i) the types or categories of out-of-home placements in which
28 children from each county were placed and the number of children placed in each type
29 or category in fiscal year 2005;

30 (ii) the total number and types or categories of out-of-home
31 placements that would need to be available in each county or multicounty region to
32 meet the needs of children who require out-of-home placements within the child's
33 home county or the multicounty region that includes the child's home county; and

1 (iii) the number and types of additional out-of-home placements
2 that would need to be developed to meet the total number identified in item (ii) of this
3 paragraph; and

4 (2) develop a plan for the Social Services Administration to meet the
5 goals of this Act.

6 (b) On or before January 1, 2006, the Special Secretary for Children, Youth,
7 and Families shall report to the Governor and, in accordance with § 2-1246 of the
8 State Government Article, the General Assembly on:

9 (1) the study required under subsection (a)(1) of this section; and

10 (2) the plan required under subsection (a)(2) of this section.

11 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
12 Act or the application thereof to any person or circumstance is held invalid for any
13 reason in a court of competent jurisdiction, the invalidity does not affect other
14 provisions or any other application of this Act which can be given effect without the
15 invalid provision or application, and for this purpose the provisions of this Act are
16 declared severable.

17 ~~SECTION 4.~~ AND BE IT FURTHER ENACTED, That this Act shall take
18 effect October 1, 2004.