

# SENATE BILL 272

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SB 448/16 – JPR

7lr1403  
CF HB 279

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By: **Senators Kelley, Benson, Brochin, Guzzone, Jennings, King, Lee, Madaleno, Manno, Muse, Norman, Peters, Pinsky, Ramirez, Ready, Smith, Young, Zirkin, and Zucker**

Introduced and read first time: January 20, 2017  
Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: February 14, 2017

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Guardianship and Child in Need of Assistance Proceedings – Jurisdiction and**  
3 **Authority of Juvenile Court**

4 FOR the purpose of authorizing the juvenile court to direct the provision of certain services  
5 to a certain child during a certain disposition hearing; requiring the juvenile court  
6 to direct the provision of certain services to a certain child during a certain  
7 permanency planning hearing or guardianship hearing; providing that, if the  
8 juvenile court enters an order directing the provision of certain services to a certain  
9 child, the juvenile court retains jurisdiction for a certain time period and for a certain  
10 purpose, notwithstanding certain provisions of law; providing that a certain order  
11 shall remain effective for a certain period of time; and generally relating to the  
12 jurisdiction and authority of the juvenile court.

13 BY repealing and reenacting, without amendments,  
14 Article – Courts and Judicial Proceedings  
15 Section 3–801(a) and (l)  
16 Annotated Code of Maryland  
17 (2013 Replacement Volume and 2016 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – Courts and Judicial Proceedings  
20 Section 3–804, 3–819(c), and 3–823(h)  
21 Annotated Code of Maryland

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2013 Replacement Volume and 2016 Supplement)

2 BY adding to

3 Article – Courts and Judicial Proceedings

4 Section 3–819(m) and 3–823(k)

5 Annotated Code of Maryland

6 (2013 Replacement Volume and 2016 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article – Family Law

9 Section 5–301, 5–324(b), and 5–328

10 Annotated Code of Maryland

11 (2012 Replacement Volume and 2016 Supplement)

12 BY adding to

13 Article – Family Law

14 Section 5–324(d)

15 Annotated Code of Maryland

16 (2012 Replacement Volume and 2016 Supplement)

17 Preamble

18 WHEREAS, § 5–324(b)(1)(ii)7B of the Family Law Article provides that, for children  
19 placed under an order of guardianship by the juvenile court following the termination of  
20 parental rights, the juvenile court shall direct the provision of certain services or the taking  
21 of certain actions as to the child’s education, health, and welfare, including, for a child with  
22 a disability, services to obtain ongoing care, if any, needed after the guardianship case ends;  
23 and

24 WHEREAS, In the recent case of *In re Adoption/Guardianship of Dustin R.*, No. 24,  
25 September Term, 2015, the Maryland Court of Appeals affirmed that these provisions  
26 empower the juvenile court to order a State agency to provide services needed to obtain  
27 ongoing care for a child under an order of guardianship after the child reaches the age of  
28 21 years and the guardianship ends and that these provisions do not violate the separation  
29 of powers doctrine enshrined in Article 8 of the Maryland Declaration of Rights; and

30 WHEREAS, The Court of Appeals further held that the juvenile court has inherent  
31 *parens patriae* powers to order these services for the protection of the child; and

32 WHEREAS, The Court of Appeals further held that these services should act as a  
33 bridge for a child with a disability to provide continuity as the child transitions to the adult  
34 guardianship system; and

35 WHEREAS, The Court of Appeals further stated that, if a State agency challenges  
36 the necessity of these services, the juvenile court has the authority to enforce an order  
37 directing the provision of these services until the child’s adult guardian files a request for  
38 a judicial or administrative hearing on the challenge; and

1 WHEREAS, Children in foster care face significant challenges when they age out of  
2 the child welfare system and transition to adulthood, including a lack of access to necessary  
3 services, resources, and support; and

4 WHEREAS, Children who are under the CINA jurisdiction of the juvenile court are  
5 not eligible for the protection provided by § 5–324(b)(1)(ii)7B of the Family Law Article, yet  
6 would benefit from that protection; now, therefore,

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

9 **Article – Courts and Judicial Proceedings**

10 3–801.

11 (a) In this subtitle the following words have the meanings indicated.

12 (l) “Developmental disability” means a severe chronic disability of an individual  
13 that:

14 (1) Is attributable to a physical or mental impairment, other than the sole  
15 diagnosis of mental illness, or to a combination of mental and physical impairments;

16 (2) Is likely to continue indefinitely;

17 (3) Results in an inability to live independently without external support  
18 or continuing and regular assistance; and

19 (4) Reflects the need for a combination and sequence of special,  
20 interdisciplinary, or generic care, treatment, or other services that are individually planned  
21 and coordinated for the individual.

22 3–804.

23 (a) (1) Except as provided in paragraph (2) of this subsection, the court has  
24 jurisdiction under this subtitle only if the alleged CINA or child in a voluntary placement  
25 is under the age of 18 years when the petition is filed.

26 (2) The court has jurisdiction under this subtitle over a former CINA:

27 (i) Whose commitment to the local department was rescinded after  
28 the individual reached the age of 18 years but before the individual reached the age of 20  
29 years and 6 months; and

30 (ii) Who did not exit foster care due to reunification, adoption,  
31 guardianship, marriage, or military duty.

1 (b) If the court obtains jurisdiction over a child, that jurisdiction continues in that  
2 case until the child reaches the age of 21 years, unless the court terminates the case.

3 (c) After the court terminates jurisdiction, a custody order issued by the court in  
4 a CINA case:

5 (1) Remains in effect; and

6 (2) May be revised or superseded only by another court of competent  
7 jurisdiction.

8 **(D) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION, IF THE COURT**  
9 **ENTERS AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER §**  
10 **3-819(C)(3) OR § 3-823(H)(2)(VII) OF THIS SUBTITLE, THE COURT RETAINS**  
11 **JURISDICTION TO RULE ON ANY MOTION RELATED TO THE ENFORCEMENT,**  
12 **MODIFICATION, OR TERMINATION OF THE ORDER, FOR AS LONG AS THE ORDER IS**  
13 **EFFECTIVE.**

14 3-819.

15 (c) In addition to any action under subsection (b)(1)(iii) of this section, the court  
16 may:

17 (1) (i) Place a child under the protective supervision of the local  
18 department on terms the court considers appropriate;

19 (ii) Grant limited guardianship to the department or an individual  
20 or both for specific purposes including medical and educational purposes or for other  
21 appropriate services if a parent is unavailable, unwilling, or unable to consent to services  
22 that are in the best interest of the child; or

23 (iii) Order the child and the child's parent, guardian, or custodian to  
24 participate in rehabilitative services that are in the best interest of the child and family;  
25 [and]

26 (2) Determine custody, visitation, support, or paternity of a child in  
27 accordance with § 3-803(b) of this subtitle; AND

28 **(3) FOR A CHILD WITH A DEVELOPMENTAL DISABILITY, DIRECT THE**  
29 **PROVISION OF SERVICES TO OBTAIN ONGOING CARE, IF ANY, NEEDED AFTER THE**  
30 **COURT'S JURISDICTION ENDS.**

31 **(M) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER**  
32 **SUBSECTION (C)(3) OF THIS SECTION IS EFFECTIVE UNTIL:**

1           **(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE IF**  
2 **ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE**  
3 **ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND**

4           **(2) (I) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
5 **ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY**  
6 **THE COURT; OR**

7           **(II) IF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
8 **CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE**  
9 **CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING**  
10 **REGARDING THE CHALLENGE.**

11 3-823.

12           (h) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this  
13 paragraph, the court shall conduct a hearing to review the permanency plan at least every  
14 6 months until commitment is rescinded or a voluntary placement is terminated.

15                   (ii) The court shall conduct a review hearing every 12 months after  
16 the court determines that the child shall be continued in out-of-home placement with a  
17 specific caregiver who agrees to care for the child on a permanent basis.

18                   (iii) 1. Unless the court finds good cause, a case shall be  
19 terminated after the court grants custody and guardianship of the child to a relative or  
20 other individual.

21                           2. If the court finds good cause not to terminate a case, the  
22 court shall conduct a review hearing every 12 months until the case is terminated.

23                           3. The court may not conclude a review hearing under  
24 subsubparagraph 2 of this subparagraph unless the court has seen the child in person.

25           (2) At the review hearing, the court shall:

26                   (i) Determine the continuing necessity for and appropriateness of  
27 the commitment;

28                   (ii) Determine and document in its order whether reasonable efforts  
29 have been made to finalize the permanency plan that is in effect;

30                   (iii) Determine the extent of progress that has been made toward  
31 alleviating or mitigating the causes necessitating commitment;

32                   (iv) Project a reasonable date by which a child in placement may be  
33 returned home, placed in a preadoptive home, or placed under a legal guardianship;

1 (v) Evaluate the safety of the child and take necessary measures to  
2 protect the child; [and]

3 (vi) Change the permanency plan if a change in the permanency plan  
4 would be in the child's best interest; AND

5 **(VII) FOR A CHILD WITH A DEVELOPMENTAL DISABILITY, DIRECT**  
6 **THE PROVISION OF SERVICES TO OBTAIN ONGOING CARE, IF ANY, NEEDED AFTER**  
7 **THE COURT'S JURISDICTION ENDS.**

8 (3) Every reasonable effort shall be made to effectuate a permanent  
9 placement for the child within 24 months after the date of initial placement.

10 **(K) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER**  
11 **SUBSECTION (H)(2)(VII) OF THIS SECTION IS EFFECTIVE UNTIL:**

12 **(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE IF**  
13 **ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE**  
14 **ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND**

15 **(2) (I) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
16 **ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY**  
17 **THE COURT; OR**

18 **(II) IF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
19 **CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE**  
20 **CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING**  
21 **REGARDING THE CHALLENGE.**

22 **Article – Family Law**

23 5–301.

24 (a) In this subtitle the following words have the meanings indicated.

25 (b) “Caregiver” means a person with whom a child resides and who exercises  
26 responsibility for the welfare of the child.

27 (c) “Child” means an individual who is the subject of a guardianship or adoption  
28 petition under this subtitle.

29 **(D) “DEVELOPMENTAL DISABILITY” HAS THE MEANING STATED IN § 3–801**  
30 **OF THE COURTS ARTICLE.**

1            **[(d)] (E)**        “Guardianship” means an award, under this subtitle, of any power of a  
2 guardian.

3            **[(e)] (F)**        “Identifying information” means information that reveals the identity  
4 or location of an individual.

5            **[(f)] (G)**        (1)        “Parent” means an individual who, at the time a petition for  
6 guardianship is filed under this subtitle or at any time before a court terminates the  
7 individual’s parental rights:

8                            (i)        meets a criterion in § 5–306(a) of this subtitle; or

9                            (ii)       is the mother.

10                        (2)        “Parent” does not include an individual whom a court has adjudicated  
11 not to be a father or mother of a child.

12            **[(g)] (H)**        “Party” means:

13                        (1)        in a guardianship case under this subtitle:

14                            (i)        the child;

15                            (ii)       except as provided in § 5–326(a)(3)(iii) of this subtitle, the child’s  
16 parent; and

17                            (iii)       the local department to which the child is committed;

18                        (2)        in an adoption case under Part III of this subtitle:

19                            (i)        the child;

20                            (ii)       the child’s parent; and

21                            (iii)       the individual seeking adoption;

22                        (3)        in an adoption case under Part IV of this subtitle:

23                            (i)        the child; and

24                            (ii)       the individual seeking adoption; and

25                        (4)        if express reference is made to a CINA case, a governmental unit or  
26 person defined as a party in § 3–801 of the Courts Article.

27 5–324.

- 1           (b)   (1)   In a separate order accompanying an order granting guardianship of a  
2 child, a juvenile court:
- 3                   (i)   shall include a directive terminating the child’s CINA case;
- 4                   (ii)  consistent with the child’s best interests:
- 5                           1.    may place the child:
- 6                                   A.   subject to paragraph (2) of this subsection, in a specific  
7 type of facility; or
- 8                                   B.   with a specific individual;
- 9                           2.    may direct provision of services by a local department to:
- 10                                   A.   the child; or
- 11                                   B.   the child’s caregiver;
- 12                           3.    subject to a local department retaining legal guardianship,  
13 may award to a caregiver limited authority to make an emergency or ordinary decision as  
14 to the child’s care, education, mental or physical health, or welfare;
- 15                           4.    may allow access to a medical or other record of the child;
- 16                           5.    may allow visitation for the child with a specific  
17 individual;
- 18                           6.    may appoint, or continue the appointment of, a  
19 court–appointed special advocate for any purpose set forth under § 3–830 of the Courts  
20 Article;
- 21                           7.    shall direct the provision of any other service or taking of  
22 any other action as to the child’s education, health, and welfare, including:
- 23                                   A.   for a child who is at least 16 years old, services needed to  
24 help the child’s transition from guardianship to independence; or
- 25                                   B.   for a child with a **DEVELOPMENTAL** disability, services to  
26 obtain ongoing care, if any, needed after the guardianship case ends; and
- 27                           8.    may co–commit the child to the custody of the Department  
28 of Health and Mental Hygiene and order the Department of Health and Mental Hygiene to  
29 provide a plan for the child of clinically appropriate services in the least restrictive setting,  
30 in accordance with federal and State law;

1 (iii) if entered under § 5–322 of this subtitle, shall state each party’s  
2 response to the petition;

3 (iv) shall state a specific factual finding on whether reasonable  
4 efforts have been made to finalize the child’s permanency plan;

5 (v) shall state whether the child’s parent has waived the right to  
6 notice; and

7 (vi) shall set a date, no later than 180 days after the date of the order,  
8 for the initial guardianship review hearing under § 5–326 of this subtitle.

9 (2) (i) Except for emergency commitment in accordance with § 10–617  
10 of the Health – General Article or as expressly authorized by a juvenile court in accordance  
11 with the standards in § 3–819(h) or (i) of the Courts Article, a child may not be committed  
12 or otherwise placed for inpatient care or treatment in a psychiatric facility or a facility for  
13 the developmentally disabled.

14 (ii) A juvenile court shall include in a commitment order under this  
15 paragraph a requirement that the guardian:

16 1. file a progress report with the juvenile court at least every  
17 180 days; and

18 2. provide a copy of each report to each person entitled to  
19 notice of a review hearing under § 5–326 of this subtitle.

20 (iii) Every 180 days during a commitment or placement under this  
21 paragraph, a juvenile court shall hold a hearing to determine whether the standards in §  
22 3–819(h) or (i) of the Courts Article continue to be met.

23 **(D) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD WITH A**  
24 **DEVELOPMENTAL DISABILITY UNDER SUBSECTION (B)(1)(II)7B OF THIS SECTION IS**  
25 **EFFECTIVE UNTIL:**

26 **(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE IF**  
27 **ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE**  
28 **ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND**

29 **(2) (I) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
30 **ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY**  
31 **THE COURT; OR**

32 **(II) IF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
33 **CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE**

1 **CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING**  
2 **REGARDING THE CHALLENGE.**

3 5–328.

4 (a) If a local department is a child’s guardian under this subtitle, a juvenile court:

5 (1) retains jurisdiction until:

6 (i) the child attains 18 years of age; or

7 (ii) the juvenile court finds the child to be eligible for emancipation;

8 and

9 (2) may continue jurisdiction until the child attains 21 years of age.

10 (b) If a juvenile court designates an individual as a child’s guardian, the juvenile  
11 court:

12 (1) may retain jurisdiction until the child attains 18 years of age; or

13 (2) on finding further review unnecessary to maintain the child’s health  
14 and welfare, may terminate the case before the child attains 18 years of age.

15 (c) An order for adoption of a child terminates the child’s guardianship case.

16 (d) On termination of a guardianship case, a juvenile court shall close the case.

17 **(E) NOTWITHSTANDING SUBSECTIONS (A) AND (B) OF THIS SECTION, IF THE**  
18 **COURT ENTERS AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD**  
19 **UNDER § 5–324(B)(1)(II)7B OF THIS SUBTITLE, THE COURT RETAINS JURISDICTION**  
20 **TO RULE ON ANY MOTION RELATED TO THE ENFORCEMENT, MODIFICATION, OR**  
21 **TERMINATION OF THE ORDER, FOR AS LONG AS THE ORDER IS EFFECTIVE.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 2017.