

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 272

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary

**Guardianship and Child in Need of Assistance Proceedings - Jurisdiction and
Authority of Juvenile Court**

This bill authorizes, at a disposition hearing in a child in need of assistance (CINA) proceeding, and requires, at a permanency planning hearing, the juvenile court, in regards to a child with a developmental disability, to direct the provision of services to obtain ongoing care, if any, needed after the court's jurisdiction ends. The court retains jurisdiction to rule on any motion related to the enforcement, modification, or termination of the order for as long as the order is effective. The bill adds related requirements to provisions regarding guardianships.

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, to the extent that the Department of Human Resources (DHR) is required to provide ongoing services pursuant to an order issued by the juvenile court and for potential computer programming costs in FY 2018 only. Any potential minimal increase in expenditures for the Judiciary due to the extended jurisdiction and expanded authority of the juvenile courts is not anticipated to materially impact State finances. Potential significant increase in general/federal fund expenditures for the Department of Health and Mental Hygiene (DHMH) to the extent that additional services are ordered for children with developmental disabilities, as discussed below; federal fund revenues increase correspondingly to any expenditures attributed to the Medical Assistance Program.

Local Effect: Any potential minimal increase in expenditures for circuit courts due to the extended jurisdiction and expanded authority of the juvenile courts is not anticipated to materially impact local government finances.

Small Business Effect: None.

Analysis

Bill Summary: An order directing the provision of services to a child with a developmental disability is effective until (1) the child is transitioned to adult guardianship care if adult guardianship is necessary and there is no less restrictive alternative that meets the needs of the child and (2) DHMH enters into an agreement to provide or obtain the services ordered by the court or, if the order is challenged, the conclusion of any administrative or judicial review proceeding regarding the necessity of the services ordered.

In a guardianship order for a child with a developmental disability, the bill specifies that an order directing the provision of services to a child, as authorized under current law, is effective for the time periods as specified above. The bill also specifies that the current law provisions are for a child with a developmental disability.

If the court enters an order directing the provision of services to a child, as specified, the court retains jurisdiction to rule on any motion related to the enforcement, modification, or termination of the order, for as long as the order is effective.

Current Law: A CINA is a child who requires court intervention because (1) the child has been abused or neglected or has a developmental disability or a mental disorder and (2) the child's parents, guardian, or custodian are unable or unwilling to provide proper care and attention to the child.

In making a disposition on a CINA petition, a juvenile court may take numerous actions, including (1) placing a child under the protective supervision of the local department of social services, granting limited guardianship to DHR and/or an individual for specific purposes, or ordering rehabilitative services, as specified, and (2) determining custody, visitation, support, or paternity in accordance with statutory procedures. If a child enters an out-of-home placement, a juvenile court must also take specified, periodic actions to review the permanency plan of a child in an out-of-home placement.

A juvenile court has jurisdiction over CINA cases only if the alleged CINA or child in a voluntary placement is younger than age 18 when the petition is filed. A juvenile court has jurisdiction over a former CINA, as specified. Once jurisdiction is obtained, it continues in that case until the child reaches age 21, unless the court terminates the case. After the court terminates jurisdiction, a custody order issued by the court in a CINA case remains in effect and may be revised or superseded only by another court of competent jurisdiction.

Consistent with the child's best interests, if a juvenile court grants guardianship of a child, the court must take specified actions, including directing the provision of any service or taking of any other action as to the child's education, health, and welfare, including

(1) services needed to help the child's transition from guardianship to independence, if a child is at least age 16 or (2) for a child with a disability, services to obtain ongoing care, if any, that are needed after the guardianship case ends.

If a local department is a child's guardian, a juvenile court retains jurisdiction until the child reaches age 18 or the juvenile court finds the child to be eligible for emancipation. The court may continue jurisdiction until the child reaches age 21. If an individual is designated as a child's guardian, the juvenile court may retain jurisdiction until the child reaches age 18. If the juvenile court makes a finding that further review is unnecessary to maintain the child's health and welfare, it may terminate the case before the child reaches age 18.

Pursuant to § 3-801 of the Courts and Judicial Proceedings Article, a "developmental disability" means a severe chronic disability of an individual that (1) is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in an inability to live independently without external support or continuing and regular assistance; and (4) reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

Background: As noted in the preamble, the Court of Appeals, in *In re Adoption/Guardianship of Dustin. R.*, No. 24, September Term, 2015, affirmed that statutory provisions empower a juvenile court to order a State agency to provide services needed to obtain ongoing care for a child under an order of guardianship after the child reaches age 21 and the guardianship ends without violating the separation of powers doctrine within the Maryland Declaration of Rights. According to the Court of Appeals, these services should act as a bridge for a child with a disability to provide continuity as the child transitions to the adult guardianship system. The preamble also notes that although children under the CINA jurisdiction of the juvenile court would benefit from provisions enabling a juvenile court to order services or actions regarding a child's education, health, and welfare, they are not eligible for this protection.

State Fiscal Effect: State expenditures increase, potentially significantly, due to the extended jurisdiction of the juvenile court for CINA and guardianship cases involving a child with a developmental disability and the expanded authority of the court to direct services to obtain ongoing care, if any, needed after the court's jurisdiction ends. An exact fiscal estimate of the costs associated with these provisions depends on numerous factors, including the extent to which the juvenile court enters orders directing the provision of ongoing services, the services required pursuant to those orders, the extent to which judges consult with the Developmental Disabilities Administration (DDA) prior to entering

orders, and how quickly children with developmental disabilities are transitioned to adult guardianship care, if necessary, or another less restrictive alternative.

Department of Health and Mental Hygiene

According to DDA, in fiscal 2016, 32 youth aged out of DHR services and into DDA services. DDA advises that when an individual transfers to its care, it conducts its own assessment as to the services for which an individual is eligible. While in many cases there may be close alignment between what a juvenile court orders is necessary for ongoing care and what DDA deems an individual is eligible for, there may be situations in which the juvenile court orders ongoing services that surpass the level of care that would have otherwise been provided. Because the bill requires the court's order to be in effect until either DHMH agrees to provide or obtain the services or, pursuant to a challenge of the order, any administrative or judicial review proceeding concludes, DHMH is responsible for funding the services until the conclusion of any proceeding. DHMH already has this responsibility for children under guardianship of the juvenile court for whom ongoing services have been ordered, but not for children under the CINA jurisdiction. Furthermore, DDA advises that in practice, when a judge under the existing authority of the juvenile court orders ongoing services for a child who may have a developmental disability, DDA is notified and has an opportunity to present its own assessment of whether the child has a developmental disability and, if so, the services for which a child would be eligible before the child is transitioned into DDA care. However, DDA advises that the bill's provisions may circumvent this process and instead result in judges issuing orders for ongoing care without first consulting with DDA to see if a child would be eligible for services. DDA therefore estimates that the court may order DDA to provide services to individuals who would not otherwise be eligible for DDA services, and that DDA would be responsible for funding these services until the resolution of an administrative and/or judicial challenge.

While these provisions have the potential to increase DDA's expenditures, because these individuals have highly individualized needs based on the applicable developmental disability, such an impact cannot be reliably qualified beforehand as it depends on the specific orders issued by the juvenile court. According to DDA, the annual cost of services for the 32 youth in fiscal 2016 was approximately \$3.0 million (exclusive of medical costs that are attributable directly to Medical Assistance). *For illustrative purposes only*, if DDA is ordered to provide services for an additional 10 individuals each year, total fund expenditures increase by \$500,000 annually. If the courts are ordering services for which an individual is ineligible under DDA guidelines (the Medicaid Waiver provision), these services would be paid for with State general funds; otherwise, the expenditures will be 50% general funds/50% federal funds. This illustrative example reflects an average annual cost per individual of \$100,000 and also assumes that the administrative and/or judicial challenge is resolved within six months, which is a conservative estimate.

DHMH advises that general and federal fund expenditures may increase further to the extent that the juvenile courts direct the provision of medical services (in addition to any expenditures that are related solely to DDA services) to children with developmental disabilities who are enrolled in the Medical Assistance Program. Any such impact cannot be quantified beforehand. Federal fund revenues increase correspondingly.

Department of Human Resources

DHR has previously advised that, despite coordination between DDA and DHR prior to the time in which a youth is transitioning, there may be (and have been) isolated instances in which the court's jurisdiction has ended prior to the youth's transfer. Because the bill extends the jurisdiction of the juvenile court for as long as an order is effective, DHR advises that the bill has the potential to significantly increase expenditures, as it cannot state with certainty that it would never be responsible for any costs associated with ongoing services before a child is successfully transitioned to adult guardianship care. DHR provided a fiscal estimate of \$5.6 million in fiscal 2018, which includes programming costs of \$1,958,400 in fiscal 2018 only, and \$3.7 million annually thereafter. The estimate also includes personnel costs associated with two additional caseworkers and approximately \$3.5 million annually to cover expenditures for an average of 21 youth for up to two additional years. DHR also notes that the estimate is conservative, as the bill may result in judges deeming an increased number of children to have "developmental disabilities." However, this estimate seemingly assumes that DHR incurs costs related to almost two-thirds of the children who transition from care annually. While there may be some instances in which DHR is responsible for a child's care during any gap in the transition phase (which DHR has previously advised can vary but is likely to be no longer than six months), without actual experience under the bill, the Department of Legislative Services advises that these cumulative ongoing costs as provided by DHR are speculative. However, based on the average monthly cost of care as provided by DHR, general fund expenditures increase by approximately \$7,017 per month for each additional child for whom DHR is responsible for providing care.

Judiciary

Any fiscal impact on the Judiciary depends on the level of the court's involvement in specific cases regarding children with developmental disabilities. To the extent that a juvenile court's order is not challenged and the child is successfully transitioned to the adult guardianship system or a suitable alternative, the extended jurisdiction does not have an impact. If, however, orders are challenged, additional hearings are likely required to resolve any issues. However, it is anticipated that any potential minimal expenditures to accommodate additional hearings do not materially impact the workload or finances of the Judiciary or the circuit courts.

Additional Information

Prior Introductions: HB 683 of 2016, a substantially similar bill, passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 448, passed the Senate with amendments and the House with amendments. However, the chambers were unable to reconcile their versions of the bills.

Cross File: HB 279 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Department of Health and Mental Hygiene; Department of Human Resources; Department of Legislative Services

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