

SENATE BILL 382

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1998 Regular Session
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By: **Senator Ruben (Montgomery County Administration) and Senator Collins (Baltimore County Administration) and Senators Forehand, Kelley, Hoffman, Hogan, Roesser, Hollinger, Van Hollen, Dorman, Teitelbaum, Boozer, Bromwell, Della, Stone, Sfikas, and McCabe**

Introduced and read first time: February 6, 1998

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Child Protection Act of 1998**

3 FOR the purpose of providing that the safety and health of children are paramount
4 considerations in certain proceedings relating to adoption and guardianship;
5 altering the time period within which a permanent placement for a certain child
6 should be effectuated; declaring a certain legislative purpose; establishing a
7 certain rebuttable presumption; and generally relating to child protection and
8 placement proceedings.

9 BY repealing and reenacting, without amendments,
10 Article 27 - Crimes and Punishments
11 Section 643B(a)
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1997 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Courts and Judicial Proceedings
16 Section 3-826.1
17 Annotated Code of Maryland
18 (1995 Replacement Volume and 1997 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Family Law
21 Section 5-303 and 5-313
22 Annotated Code of Maryland
23 (1991 Replacement Volume and 1997 Supplement)

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

1

Article 27 - Crimes and Punishments

2 643B.

3 (a) As used in this section, the term "crime of violence" means abduction;
4 arson in the first degree; kidnapping; manslaughter, except involuntary
5 manslaughter; mayhem and maiming, as previously proscribed under §§ 384, 385,
6 and 386 of this article; murder; rape; robbery; robbery with a deadly weapon;
7 carjacking or armed carjacking; sexual offense in the first degree; sexual offense in
8 the second degree; use of a handgun in the commission of a felony or other crime of
9 violence; an attempt to commit any of the aforesaid offenses; assault in the first
10 degree; and assault with intent to murder, assault with intent to rape, assault with
11 intent to rob, assault with intent to commit a sexual offense in the first degree, and
12 assault with intent to commit a sexual offense in the second degree, as these crimes
13 were previously proscribed under former § 12 of this article.

14 The term "correctional institution" includes Patuxent Institution and a local or
15 regional jail or detention center.

16

Article - Courts and Judicial Proceedings

17 3-826.1.

18 (a) No later than 10 months after disposition made in the case of a child
19 alleged to be in need of assistance, the court shall hold a hearing to review the
20 implementation of a permanency plan for each child committed under § 3-820(c)(1)(ii)
21 of this subtitle.

22 (b) (1) Upon the written request of any party or on its own motion, the court
23 may schedule a hearing at any earlier time to review the implementation of a
24 permanency plan for any child committed pursuant to § 3-820 of this subtitle.

25 (2) The written request for review shall state the reason for the request
26 and any issues to be raised.

27 (c) At the review hearing for a child in placement, the court shall:

28 (1) Determine the future status of the child, including whether the child
29 should be:

30 (i) Returned to the parent or guardian;

31 (ii) Placed with relatives to whom adoption or guardianship is
32 granted;

33 (iii) Placed for adoption;

34 (iv) Emancipated;

1 (v) Because of the child's special needs or circumstances, continued
2 in placement on a permanent or long-term basis; or

3 (vi) Because of the child's special needs or circumstances, continued
4 in placement for a specified period; or

5 (2) For a child who has attained the age of 16, determine the services
6 needed to assist the child to make the transition from placement to independent
7 living.

8 (d) For a child whom the court determines shall be continued in placement
9 under subsection (c)(1)(vi) of this section:

10 (1) The court shall:

11 (i) Determine the continuing necessity for and appropriateness of
12 the commitment;

13 (ii) Determine the extent of compliance with the permanency plan;

14 (iii) Determine the extent of progress which has been made toward
15 alleviating or mitigating the causes necessitating commitment; and

16 (iv) Project a reasonable date by which a child in placement may be
17 returned home or placed for adoption or legal guardianship; and

18 (2) The court shall conduct a review hearing no less frequently than
19 every 6 months until commitment is rescinded.

20 (3) Every reasonable effort shall be made to effectuate a permanent
21 placement for the child within [24] 15 months from the date of initial placement.

22 (e) For a child whom the court determines shall be placed for adoption under
23 subsection (c)(1)(iii) of this section:

24 (1) The court shall order that the petition for termination of parental
25 rights shall be filed within 30 days; and

26 (2) The court shall schedule the termination of parental rights hearing in
27 lieu of the next 6-month review hearing.

28 (f) For a child whom the court determines shall be placed in permanent foster
29 care under subsection (c)(1)(v) of this section:

30 (1) The court may order permanent foster care or kinship care with a
31 specific caregiver who agrees to care for the child on a permanent basis; and

32 (2) No review hearing need be held unless the court orders otherwise.

1 (g) For a child whom the court determines shall be placed in long-term foster
 2 care under subsection (c)(1)(v) of this section court reviews shall be conducted no less
 3 frequently than every 6 months.

4

Article - Family Law

5 5-303.

6 (a) The General Assembly finds that the policies and procedures of this
 7 subtitle that concern adoption are socially necessary and desirable.

8 (b) The purposes of this subtitle are to:

9 (1) PROVIDE CHILDREN WITH STABLE HOMES THAT PROTECT THEIR
 10 SAFETY AND HEALTH;

11 (2) protect:

12 (1) children from:

13 (i) unnecessary separation from their natural parents; [and

14 (ii) {2list}(3) PERMIT adoption ONLY by individuals who are [unfit] FIT for the
 15 responsibility;

16 [(2)] (4) PROTECT natural parents from MAKING a hurried or
 17 ill-considered decision to give up a child; and

18 [(3)] (5) PROTECT adoptive parents:

19 (i) by providing them information about the child and the child's
 20 background; and

21 (ii) from a future disturbance of their relationship with the child by
 22 a natural parent.

23 5-313.

24 (a) A court may grant a decree of adoption or a decree of guardianship,
 25 without the consent of a natural parent otherwise required by §§ 5-311 and 5-317 of
 26 this subtitle, if the court finds by clear and convincing evidence that it is in the best
 27 interest of the child to terminate the natural parent's rights as to the child and that:

28 (1) the child is abandoned as provided in subsection (b) of this section;

29 (2) in a prior juvenile proceeding, the child has been adjudicated to be a
 30 child in need of assistance, a neglected child, an abused child, or a dependent child; or

31 (3) the following set of circumstances exists:

1 (i) the child has been continuously out of the custody of the natural
2 parent and in the custody of a child placement agency for at least 1 year;

3 (ii) the conditions that led to the separation from the natural
4 parent still exist or [similar] OTHER conditions of a potentially harmful nature still
5 exist;

6 (iii) there is little likelihood that those conditions will be remedied
7 at an early date so that the child can be returned to the natural parent in the
8 immediate future; and

9 (iv) a continuation of the relationship between the natural parent
10 and the child would diminish greatly the child's prospects for early integration into a
11 stable and permanent family.

12 (b) The court may find that a child is abandoned for purposes of this section if,
13 after a thorough investigation by the child placement agency, the court finds that:

14 (1) the identity of the child's natural parents is unknown; and

15 (2) no one has claimed to be the child's natural parent within 2 months of
16 the alleged abandonment of the child.

17 (c) (1) In determining whether it is in the best interest of the child to
18 terminate a natural parent's rights as to the child in any case, except the case of an
19 abandoned child, the court shall [consider] GIVE:

20 (I) PARAMOUNT CONSIDERATION TO THE SAFETY AND HEALTH OF
21 THE CHILD; AND

22 (II) SECONDARY CONSIDERATION TO:

23 [(1)] 1. the timeliness, nature, and extent of the services offered by the
24 child placement agency to facilitate reunion of the child with the natural parent;

25 [(2)] 2. any social service agreement between the natural parent and
26 the child placement agency, and the extent to which all parties have fulfilled their
27 obligations under the agreement;

28 [(3)] 3. the child's feelings toward and emotional ties with the child's
29 natural parents, the child's siblings, and any other individuals who may significantly
30 affect the child's best interest;

31 [(4)] 4. the child's adjustment to home, school, and community;

32 [(5)] 5. THE OUTCOME OF the effort the natural parent has made to
33 adjust the natural parent's circumstances, conduct, or conditions to make it in the
34 best interest of the child to be returned to the natural parent's home, including:

35 [(i)] A. the extent to which the natural parent has maintained
36 regular contact with the child under a plan to reunite the child with the natural

1 parent, but the court may not give significant weight to any incidental visit,
2 communication, or contribution;

3 [(ii)] B. if the natural parent is financially able, the payment of a
4 reasonable part of the child's substitute physical care and maintenance;

5 [(iii)] C. the maintenance of regular communication by the natural
6 parent with the custodian of the child; and

7 [(iv)] D. whether additional services would be likely to bring about
8 a lasting parental adjustment so that the child could be returned to the natural
9 parent within an ascertainable time, not exceeding 18 months from the time of
10 placement, but the court may not consider whether the maintenance of the
11 parent-child relationship may serve as an inducement for the natural parent's
12 rehabilitation; and

13 [(6)] 6. all services offered to the natural parent before the placement of
14 the child, whether offered by the agency to which the child is committed or by other
15 agencies or professionals.

16 (2) IN CONSIDERING THE SAFETY OF THE CHILD UNDER PARAGRAPH (1)
17 OF THIS SUBSECTION, THERE IS A REBUTTABLE PRESUMPTION THAT THE FUTURE
18 SAFETY OF THE CHILD WILL BE AT RISK IF THE NATURAL PARENT HAS BEEN
19 CONVICTED IN ANY STATE OR IN ANY COURT OF THE UNITED STATES OF
20 COMMITTING OR AIDING OR ABETTING, CONSPIRING, OR SOLICITING TO COMMIT AN
21 OFFENSE THAT WOULD BE A CRIME OF VIOLENCE, AS DEFINED IN ARTICLE 27, § 643B
22 OF THE CODE IF COMMITTED IN THIS STATE, AGAINST:

23 (I) THE CHILD;

24 (II) THE OTHER NATURAL PARENT OF THE CHILD;

25 (III) A SIBLING OF THE CHILD; OR

26 (IV) ANY OTHER MEMBER OF THE HOUSEHOLD IN WHICH THE
27 CHILD RESIDED AT THE TIME OF THE OFFENSE.

28 (d) (1) In determining whether it is in the best interest of the child to
29 terminate a natural parent's rights as to the child in a case involving a child who has
30 been adjudicated to be a child in need of assistance, a neglected child, an abused child,
31 or a dependent child, the court shall consider the factors in subsection (c) of this
32 section and whether any of the following continuing or serious conditions or acts exist:

33 (i) the natural parent has a disability that renders the natural
34 parent consistently unable to care for the immediate and ongoing physical or
35 psychological needs of the child for long periods of time;

36 (ii) the natural parent has committed acts of abuse or neglect
37 toward any child in the family;

1 (iii) the natural parent has failed repeatedly to give the child
2 adequate food, clothing, shelter, and education or any other care or control necessary
3 for the child's physical, mental, or emotional health, even though the natural parent
4 is physically and financially able; or

5 (iv) 1. the child was born:

6 A. addicted to or dependent on cocaine, heroin, or a
7 derivative thereof; or

8 B. with a significant presence of cocaine, heroin, or a
9 derivative thereof in the child's blood as evidenced by toxicology or other appropriate
10 tests; and

11 2. the natural parent refuses admission into a drug
12 treatment program or failed to fully participate in a drug treatment program.

13 (2) If a natural parent does not provide specified medical treatment for a
14 child because the natural parent is legitimately practicing religious beliefs, that
15 reason alone does not make the natural parent a negligent parent.

16 (3) The court shall consider the evidence under paragraph (1) of this
17 subsection regarding continuing or serious conditions or acts and may waive the child
18 placement agency's obligations under subsection (c) of this section if the court, after
19 appropriate evaluation of efforts made and services rendered, finds by clear and
20 convincing evidence that the waiver of those obligations is in the best interest of the
21 child.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 1998.