

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE
Revised

House Bill 1093 (Delegate Montague. *et al.*)
Judiciary

Family Law - Children in Out-of-Home Placements

This bill brings State law into compliance with recent changes in federal adoption and foster care law. It declares a legislative finding that the purpose of State adoption and guardianship law is to provide children with stable homes that protect their safety and health. It further provides that, in proceedings relating to adoption and guardianship, a court must give primary consideration to the safety and health of the child in determining whether it is in the best interest of the child to terminate a natural parent's rights. It requires expedited termination of parental rights (TPR) under the following circumstances: (1) a court finds that the child is an abandoned infant; (2) a court finds that a parent has been convicted of a crime of violence against the child or other household member; or (3) the child has been placed in out-of-home services for 15 of the most recent 22 months. It provides that a child's safety and health are the primary concern in determining reasonable efforts to be made in reunifying a family. If a court finds by clear and convincing evidence that a parent has chronically abused or neglected the child; been convicted of a crime of violence against the child or other household member; or involuntarily lost parental rights of a sibling of the child, a court is required to: (1) waive reasonable reunification efforts; and (2) make a specific finding as to whether the return of the child to the custody of the natural parent poses an unacceptable risk to the future safety of the child.

The bill takes effect July 1, 1998.

Fiscal Summary

State Effect: Indeterminate effect on general and federal fund expenditures. Revenues from federal adoption incentive payments could increase by an estimated \$600,000 in FY 1999 and subsequent years.

Local Effect: Significant expenditure increase. Revenues would not be affected.

Small Business Effect: None.

Fiscal Analysis

Bill Summary: The bill provides that with respect to children in out-of-home placements on July 1, 1998, the State shall expedite termination of parental rights for one-third of the children by October 1, 1998 (giving priority to children for whom the permanency plan is adoption and who have been in foster care for the greatest length of time); another one-third by April 1, 1999, and all remaining children by October 1, 1999.

The bill requires a court to hold a permanency planning hearing no later than 11 months after a child enters an “out-of-home placement” or within 30 days after the court determines that reasonable efforts to reunify are not required. Entry into an out-of-home placement is defined as occurring 30 days after the child is placed in out-of-home placement. It prohibits a court from ordering a child to be continued in placement unless it finds that a child placement agency has documented a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights, or be placed for adoption with an appropriate relative. The court is required to conduct a hearing to review the permanency plan at least every six months until commitment is rescinded, unless the court grants guardianship of the child to a relative or places the child in permanent foster care or kinship care.

The bill changes the name of foster care review boards to out-of-home placement review boards. It provides that local boards will review cases from the entire out-of-home population in accordance with local plans approved by the State board and the Department of Human Resources (DHR).

It alters the definition of foster care and establishes definitions for out-of-home placement, group care, kinship care, and residential treatment care.

Background: The federal Adoption and Safe Families Act of 1997, which provides that the health and safety of the child are paramount in determining whether reasonable efforts to preserve families have been undertaken, makes it easier to remove children from abusive families, and speeds up the adoption process.

Specific changes include: (1) requiring that states set up permanency placement plans for a child after one year of foster care rather than the 18 months required under prior federal law (Maryland already has a stricter standard); (2) requiring that states file for termination of parental rights (TPR) if a child has been in a foster home for 15 of the previous 25 months; (3) awarding states that increase their adoptions with \$4,000 for each child adopted above the previous year’s number and an additional \$2,000 for each adoption of a special needs child.

To continue to qualify for federal Title IV-E (foster care/adoption) funding, states must come into compliance with the new federal requirements. The proposed fiscal 1999 budget includes \$93 million in federal IV-E funds for foster care/subsidized adoption maintenance payments, child welfare services, and administrative services.

State Revenues: The bill's provisions expedite termination of parental rights and bring State law into compliance with the federal Adoption and Safe Families Act. As a result, Maryland could become eligible for an estimated \$600,000 in federal adoption incentive payments. Since the bill brings Maryland into compliance with the federal Adoption and Safe Families Act, federal IV-E fund sanctions would not go into effect.

State Expenditures:

Additional TPR and Permanency Placement Hearings

Judiciary Costs

The bill could result in a significant increase in the circuit court caseload for TPR and adoption cases. The Administrative Office of the Courts (AOC) advises that the bill's provisions would result in additional and more complicated TPR hearings, necessitating significant but indeterminate data processing costs to automate a TPR tracking system, new masters or judges and clerk positions, and associated operating expenditures.

The bill requires a court to consider whether a parent has been convicted of a crime of violence in determining whether to terminate parental rights. This could lead to fewer defendants accepting a plea bargain agreement that would constitute a conviction for a crime of violence and result in more criminal trial activity. Any such increase cannot be readily quantified.

The Office of the Public Defender (OPD) advises that general fund expenditures could increase by an estimated \$323,160 in fiscal 1999, which accounts for the bill's October 1, 1998 effective date. This estimate reflects the cost of 8.5 new positions (3.5 Assistant Public Defenders, 1 Assistant Public Defender Supervisor, 2 Social Workers, and 2 Public Defender Intake Specialists to handle an anticipated increased TPR caseload which will include challenging whether reasonable reunification efforts have been made. The estimate includes salaries and fringe benefits (\$280,505), panel attorney costs (\$20,000), and ongoing operating expenses (\$22,655).

The Department of Legislative Services (DLS) advises that OPD's proposed fiscal 1999 budget includes three new Assistant Public Defender positions and a new contractual Legal

Assistant for CINA cases and an additional \$554,000 in salary funds from a turnover adjustment that could be used to hire more contractual employees. Although OPD estimates an additional 312 TPR and permanency review hearings in fiscal 1999, it has not provided a rationale for a particular number of new employees needed based on the number of anticipated hearing increases. As a result, the need for additional new positions could be reassessed in fiscal 2000, after a year's experience in bill implementation.

DHR Costs

DHR anticipates an additional 312 hearings (TPR and permanency planning) annually. Hence, expenditures for attorneys representing local departments of social services could increase by an estimated \$187,200 in fiscal 1999. This estimate assumes an average attorney fee of \$75 per hour, eight hours of an attorney's time per hearing, and 312 court hearings.

Expenditures would not increase in fiscal 1999 for legal representation of children. The Maryland Legal Services Program manages the contract for legal representation of children under the custody of local departments of social services. The contract establishes a fixed payment per child each year regardless of the number of hearings. Legal costs could increase in subsequent years to the extent that contract arrangements are re-negotiated.

Expenditures for transportation costs could increase in fiscal 1999 by an estimated \$1.1 million, of which \$0.5 million would pay for bus tokens in Baltimore City and \$0.6 million would pay for the purchase of 23 vehicles and associated operating expenses and 1.23 drivers (Transportation Aides) in each of the 23 jurisdictions, except Baltimore City. The expenditure amounts are based on the number of children in out-of-home placements and assume that 50% have transportation needs. Although DHR is already providing reunification services, the federal Adoption and Safe Families Act requires each state to provide time-limited family reunification services that include transportation to and from counseling, substance abuse, and other services. The only local department of social services with a line item in its budget for transportation services is Baltimore City; in the other jurisdictions, social workers generally end up providing transportation services.

The State foster care review board provides oversight and staffing of local boards, which are comprised of local citizens. The local boards review each foster child's case annually. They generally have not reviewed other out-of-home placement cases, such as kinship care. The bill provides that local foster care review boards will review cases from the entire out-of-home placement population in accordance with local plans approved by the State board and DHR. Foster care review boards' expenditures could increase by an indeterminate amount, depending on the local plans approved. This provision of the bill codifies a memorandum of agreement between the State board and DHR, which will go into effect on October 1, 1998.

In addition, the memorandum provides that: (1) DHR will consider the added cost to the State board of scheduling cases for review under a variety of local plans; (2) local boards are to review a sample of 10% of kinship care cases to determine whether local board review improves the permanency outcomes for children in kinship care; and (3) local boards will be allowed some discretion in the frequency with which a child's case is reviewed.

DHR Savings

The bill could result in more court decisions to terminate parental rights and a more expedient TPR process, thereby allowing children to spend less time in foster care and be adopted more rapidly. It is not possible to reliably estimate the number of additional TPR hearings resulting from the bill or the number of months of foster care avoided. The Department of Human Resources (DHR) would realize general fund savings for each month of avoided foster care because foster care will cost an estimated \$1,478 per month per child in fiscal 1999, of which 67% is general funds and 33% is federal funds. Children spend an average of 46 months in foster care before they are adopted. Adoptions are subsidized for children six or older, minorities under six, or those with special needs. The State will pay an estimated \$589 per month per child for subsidized adoptions in fiscal 1999, of which 72% is general funds and 28% is federal funds. To the extent that the bill reduces time in foster care, the number of subsidized adoptions could also be reduced because a child's prospects for adoption diminish with age and fewer children would languish in foster care until they reach the age of six.

In addition, the bill's provision for time-limited reunification efforts would limit provision of reunification services to 15 months under specified circumstances, resulting in an indeterminate but significant amount of savings.

Local Expenditures: TPR and adoption cases are heard in the civil division of the circuit court, except in Montgomery County where the cases are heard in the District Court. Local governments are responsible for funding all positions in the circuit courts, except for judges and employees of the clerks of the courts, which are State funded. Accordingly, local expenditures could increase to the extent that local governments need to hire additional staff to handle more court cases. For illustrative purposes, a Master, Bailiff, and Office Secretary would cost an estimated \$150,000 annually.

The Circuit Court of Baltimore City, which handles approximately 60% of the State's CINA and TPR cases, advises that the bill's provisions could increase TPR hearings by an estimated 50%, or 447 hearings annually, and the number of CINA cases (to petition the court to waive reasonable reunification efforts) by 300 annually. This estimate is based on the number of existing hearings and the fact that TPR filings have historically increased by 20% annually.

Based on anticipated additional hearings, expenditures for the Circuit Court of Baltimore City could increase by an estimated \$280,000 in fiscal 1999, which accounts for the bill's July 1, 1998 effective date. This estimate reflects the salary and fringe benefits cost of five new clerks, two new juvenile masters, additional computer equipment, and associated operating expenditures.

Additional Comments: Fiscal 1998 budget bill committee narrative expressed the concern of the budget committees regarding the extent of delay in the adoption process of children in foster care and the degree to which the process of terminating parental rights is responsible. The committees requested that the Administrative Office of the Courts (AOC) develop a plan for prioritizing TPR cases. In response, the AOC submitted a comprehensive report entitled, *Improving Court Performance for Abused and Neglected Children*. The Judiciary has stated that it believes that implementation of these recommendations will result in a higher priority being accorded both CINA and TPR cases.

Significant recommendations of the report include: (1) drafting legislation establishing a new CINA statute to establish uniformity of terminology and procedure among local jurisdictions; (2) restructuring the Judiciary's statistical and information gathering capabilities to overcome a lack of uniformity among jurisdictions and allow the courts to monitor CINA and TPR cases for compliance with State and federal laws and regulations (3) enhancing judicial training in the handling of TPR and CINA cases; (4) amending existing statutes to provide for legal representation of indigent parents in all critical stages of CINA cases; and (5) adopting uniform standards for legal representation of children.

Information Source(s): Department of Human Resources; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Health and Mental Hygiene (Community and Public Health Administration, General Services Administration); Circuit Court of Baltimore City; Department of Legislative Services

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