
By: **Delegates Montague and Doory**

Introduced and read first time: March 6, 2000

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Petition for Guardianship - Clarifying the Rights of a Child**

3 FOR the purpose of clarifying the right of a child subject to a petition for guardianship

4 to receive notice of and to object to the petition under certain circumstances;

5 clarifying the authority of the court to grant a decree of adoption or

6 guardianship without the consent of the child subject to the petition under

7 certain circumstances; requiring the court to consider the consent of the child

8 subject to a petition for guardianship under certain circumstances; altering

9 provisions of law providing for a waiver of certain notice of a certain report

10 written by a guardian to include a waiver from the child; requiring a petitioner

11 for guardianship filed after a certain juvenile proceeding to give notice to the

12 child subject to the petition in a certain manner under certain circumstances;

13 authorizing an attorney who represents the child to file an objection to a certain

14 petition for guardianship; requiring the court to appoint a guardian ad litem or

15 Court Appointed Special Advocate under certain circumstances; providing for

16 the application of this Act; making this Act an emergency measure; and

17 generally relating to clarifying the rights of a child subject to a petition for

18 guardianship.

19 BY repealing and reenacting, with amendments,

20 Article - Family Law

21 Section 5-313(a), 5-317, 5-319(d) and (g)(1), and 5-322

22 Annotated Code of Maryland

23 (1999 Replacement Volume and 1999 Supplement)

24 BY repealing and reenacting, without amendments,

25 Article - Family Law

26 Section 5-319(b) and (e)

27 Annotated Code of Maryland

28 (1999 Replacement Volume and 1999 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

30 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Family Law

2 5-313.

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

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

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

11 (3) the following set of circumstances exists:

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

14 (ii) the conditions that led to the separation from the natural
15 parent still exist or similar conditions of a potentially harmful nature still exist;

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

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

22 5-317.

23 (a) A petition for a decree of adoption may be preceded by a petition for
24 guardianship of the child.

25 (b) Only the executive head of a child placement agency or the attorney for the
26 child on behalf of the child may file a petition for the agency to be granted
27 guardianship.

28 (c) Except as provided in §§ 5-313 and 5-313.1 of this subtitle, the court may
29 grant a decree awarding guardianship only:

30 (1) after any investigation and hearing the court considers necessary;
31 [and]

32 (2) with the consent of each living natural parent of the child; AND

33 (3) WITH THE CONSENT OF THE CHILD, IF THE CHILD IS AT LEAST 10
34 YEARS OLD ON THE DATE THE PETITION FOR GUARDIANSHIP IS FILED AND THE
35 ATTORNEY OFFERS COMPETENT EVIDENCE THAT:

1 (I) THE CHILD HAS DEVELOPED SIGNIFICANT FEELINGS TOWARD
2 AND EMOTIONAL TIES WITH THE NATURAL PARENT THAT HAVE BEEN MAINTAINED
3 THROUGH VISITS OR TELEPHONE OR WRITTEN COMMUNICATION;

4 (II) THE NATURAL PARENT HAS BEEN INVOLVED IN SIGNIFICANT
5 ASPECTS OF THE CHILD'S LIFE, INCLUDING PARTICIPATION IN HEALTH CARE AND
6 EDUCATIONAL DECISIONS;

7 (III) THE NATURAL PARENT HAS PARTICIPATED IN FAMILY
8 COUNSELING EFFORTS WITH THE CHILD ACCORDING TO A SERVICE AGREEMENT OR
9 A COURT ORDER;

10 (IV) A CONTINUATION OF THE RELATIONSHIP BETWEEN THE
11 NATURAL PARENT AND THE CHILD WOULD BE IN THE BEST INTEREST OF THE CHILD;
12 AND

13 (V) THE CHILD HAS LIVED FOR A SIGNIFICANT PORTION OF THE
14 CHILD'S LIFE WITH ONE OR BOTH NATURAL PARENTS.

15 (d) Within 180 days after a petition for guardianship or petition for adoption is
16 filed under § 5-313 of this subtitle, the court shall rule on the petition.

17 (e) In a proceeding for guardianship, consent may be revoked at any time
18 within 30 days after the consent is signed.

19 (f) A decree of guardianship:

20 (1) terminates the natural parents' rights, duties, and obligations toward
21 the child;

22 (2) subject to § 5-319 of this subtitle, eliminates the need to give notice
23 to the natural parents of the filing of a petition for adoption of the child;

24 (3) eliminates the need for a further consent by the natural parents to an
25 adoption of the child; and

26 (4) subject to § 5-319 of this subtitle, authorizes the child placement
27 agency to consent to joint guardianship, custody, or other long-term placement that
28 the agency determines to be in the child's best interest.

29 (g) (1) After any investigation and hearing the court considers necessary,
30 the court may grant a decree awarding joint guardianship, custody, or other
31 long-term placement that the court determines to be in the child's best interest.

32 (2) If joint guardianship is awarded to a caregiver, the child placement
33 agency shall retain guardianship with the right to consent to adoption or long-term
34 care short of adoption.

1 5-319.

2 (b) Except as provided in subsection (g) of this section, a guardian with the
3 right to consent to adoption, including a guardian with the right to consent to
4 adoption who was appointed without the consent of the natural parents, shall file a
5 written report with the court and give notice of the child's status to each natural
6 parent of the child under the guardianship and to the child's court-appointed counsel
7 if:

8 (1) a placement for adoption is not made within 9 months of the decree of
9 guardianship;

10 (2) a placement for adoption is made within 9 months of the decree of
11 guardianship, but there is a disrupted placement, and a new placement is not made
12 within 120 days of the disrupted placement; or

13 (3) a final decree of adoption is not entered within 2 years after
14 placement for adoption.

15 (d) A natural parent OR A CHILD WHO IS REQUIRED TO CONSENT UNDER §
16 5-317 OF THIS SUBTITLE may waive the right to notice under this section. The waiver
17 shall appear expressly in:

18 (1) the natural parent's OR THE CHILD'S consent to the guardianship;
19 and

20 (2) the decree of guardianship.

21 (e) The written report required by this section shall:

22 (1) be filed with the court; and

23 (2) state the reasons for delay in placement for adoption.

24 (g) (1) Further reports, notices to the natural parents AND THE CHILD'S
25 COURT APPOINTED COUNSEL, and hearings are not required if the court determines
26 after a hearing that it is in the best interest of the child to remain with a specified
27 family which agrees to the long-term placement.

28 5-322.

29 (a) (1) (i) Subject to paragraph (2) of this subsection, a petitioner shall
30 give to each person whose consent is required notice of the filing of a petition for
31 adoption or a petition for guardianship.

32 (ii) In addition to the notice of filing required under subparagraph
33 (i) of this paragraph, if a petition for guardianship is filed after a juvenile proceeding
34 in which the child has been adjudicated to be a child in need of assistance, a neglected
35 child, or an abused child, a petitioner shall give notice of the filing of the petition for
36 guardianship to:

1 (3) IF THE ATTORNEY WHO REPRESENTED THE CHILD IN THE CHILD IN
2 NEED OF ASSISTANCE PROCEEDING FILES A NOTICE OF OBJECTION IN ANY CASE IN
3 WHICH A LIVING NATURAL PARENT HAS GIVEN CONSENT OR IS DEEMED TO HAVE
4 GIVEN CONSENT, THE COURT SHALL APPOINT A GUARDIAN AD LITEM OR A COURT
5 APPOINTED SPECIAL ADVOCATE, AS PROVIDED UNDER § 3-834.1 OF THIS ARTICLE,
6 FOR THE CHILD.

7 [(c)] (D) (1) Except in an independent adoption, if the court is satisfied by
8 affidavit or testimony that the petitioner, after reasonable efforts in good faith,
9 cannot learn the identity or location of a natural parent, the court may waive the
10 requirement of notice to the natural parent.

11 (2) In an independent adoption, if the court is satisfied by affidavit or
12 testimony that the petitioner, after reasonable efforts in good faith, cannot learn the
13 identity or location of a natural parent, the court may not waive the requirement of
14 notice to the natural parent, but the court shall:

15 (i) order notice by publication; or

16 (ii) if the court finds the petitioner to be indigent, order notice by
17 posting.

18 (3) If the child has been adjudicated to be a child in need of assistance in
19 a prior juvenile proceeding, and the court is satisfied by affidavit or testimony that
20 the petitioner has made reasonable good faith efforts to serve by both certified mail
21 and private process one show cause order on the parent at the addresses specified in
22 subsection (b) of this section, but was not successful, the court shall waive the
23 requirement of notice to the natural parent.

24 [(d)] (E) If a person is notified under this section and fails to file notice of
25 objection within the time stated in the show cause order or if a person's notification
26 has been waived under subsection [(c)] (D) of this section:

27 (1) the court shall consider the person who is notified or whose notice is
28 waived to have consented to the adoption or to the guardianship; and

29 (2) the petition shall be treated in the same manner as a petition to
30 which consent has been given.

31 [(e)] (F) (1) For a petition filed by a local department of social services, the
32 court shall determine that a reasonable, good faith effort has been made to identify
33 the last known address of the parent if the petitioner shows, by affidavit or testimony,
34 that inquiries were made after the petition was filed, or within the 6 months
35 preceding the filing of the petition, with the following:

36 (i) the State Motor Vehicle Administration;

37 (ii) the local department of social services;

- 1 (iii) the State Department of Public Safety and Correctional
2 Services;
- 3 (iv) the State Division of Parole and Probation;
- 4 (v) the detention center for the local jurisdiction in which the
5 petition is filed;
- 6 (vi) the records of the juvenile court for the jurisdiction in which the
7 petition is filed;
- 8 (vii) a particular social services agency or detention facility, if the
9 local department is aware that the parent has received benefits from that social
10 services agency, or has been confined in that detention facility, within the 9 months
11 preceding the filing of the petition; and
- 12 (viii) each of the following individuals that the petitioner is able to
13 locate and contact:
- 14 1. the other parent of the child;
- 15 2. known members of the parent's immediate family; and
- 16 3. the parent's current or last known employer.

17 (2) (i) The inquiry shall be considered sufficient if made by searching
18 the computer files of an identified agency or by making an inquiry to the agency or
19 person by regular mail.

20 (ii) Failure to receive a response to an inquiry within 30 days of
21 mailing shall constitute a negative response to the inquiry.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
23 construed only prospectively and may not be applied or interpreted to have any effect
24 on or application to any petition for guardianship filed before the effective date of this
25 Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
27 measure, is necessary for the immediate preservation of the public health and safety,
28 has been passed by a ye and nay vote supported by three-fifths of all the members
29 elected to each of the two Houses of the General Assembly, and shall take effect from
30 the date it is enacted.