

HOUSE BILL 707
EMERGENCY BILL

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HB 1422/00 - JUD

2001 Regular Session
1r0818

By: **Delegates Montague and Doory**

Introduced and read first time: February 8, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Adoption and Guardianship - Objection by Child to**
3 **Termination of Parental Rights**

4 FOR the purpose of limiting the circumstances under which a child who is the subject
5 of a petition for guardianship with the right to consent to adoption is entitled to
6 receive notice of and to object to the petition; establishing that, except under
7 certain circumstances, a court may grant a decree awarding guardianship only
8 with the consent of the child who is the subject of the petition if the child is at
9 least a certain age; establishing that a court may grant a decree of guardianship
10 without the consent of a child otherwise required by this Act under certain
11 circumstances; requiring a guardian with the right to consent to adoption to give
12 certain notice to a child whose consent to a guardianship is required by this Act;
13 authorizing a child whose consent to a guardianship is required by this Act to
14 waive the right to notice; establishing that the waiver shall appear expressly in
15 the child's consent to the guardianship; establishing that certain reports and
16 notices to a child's court-appointed counsel and to a child whose consent to a
17 guardianship is required by this Act are not required under certain
18 circumstances; requiring a petitioner for guardianship to give notice of the filing
19 of a petition for guardianship to the attorney who represented the child in a
20 prior child in need of assistance proceeding if the child is at least a certain age
21 under certain circumstances; authorizing an attorney for a child to file a notice
22 of objection to a guardianship on behalf of the child if the child is at least a
23 certain age under certain circumstances; specifying the requirements for a
24 notice of objection; requiring a court to appoint a Court-Appointed Special
25 Advocate or guardian ad litem for a child under certain circumstances; making
26 this Act an emergency measure; and generally relating to adoption and
27 guardianship.

28 BY repealing and reenacting, with amendments,
29 Article - Family Law
30 Section 5-313(a), 5-317(c), 5-319, and 5-322
31 Annotated Code of Maryland
32 (1999 Replacement Volume and 2000 Supplement)

33 BY repealing and reenacting, without amendments,

1 Article - Family Law
2 Section 5-317(a) and (b)
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2000 Supplement)

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

7 **Article - Family Law**

8 5-313.

9 (a) A court may grant a decree of adoption or a decree of guardianship,
10 without the consent of a natural parent otherwise required by §§ 5-311 and 5-317 of
11 this subtitle, OR A DECREE OF GUARDIANSHIP WITHOUT THE CONSENT OF A CHILD
12 OTHERWISE REQUIRED BY § 5-317 OF THIS SUBTITLE, if the court finds by clear and
13 convincing evidence that it is in the best interest of the child to terminate the natural
14 parent's rights as to the child and that:

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

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

18 (3) the following set of circumstances exists:

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

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

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

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

29 5-317.

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

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

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

3 (1) after any investigation and hearing the court considers necessary;
4 [and]

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

6 (3) WITH THE CONSENT OF THE CHILD, IF THE CHILD IS AT LEAST 10
7 YEARS OLD ON THE DATE THE PETITION FOR GUARDIANSHIP IS FILED.

8 5-319.

9 (a) In this section, "disrupted placement" means the permanent removal of a
10 child to be adopted from the prospective adoptive family or adopting individual by a
11 child placement agency before the entry of a final decree of adoption.

12 (b) Except as provided in subsection (g) of this section, a guardian with the
13 right to consent to adoption, including a guardian with the right to consent to
14 adoption who was appointed without the consent of the natural parents OR WITHOUT
15 THE CONSENT OF A CHILD WHOSE CONSENT IS REQUIRED UNDER § 5-317 OF THIS
16 SUBTITLE, shall file a written report with the court and give notice of the child's
17 status to each natural parent of the child under the guardianship [and], to the child's
18 court-appointed counsel, AND TO A CHILD WHOSE CONSENT IS REQUIRED UNDER §
19 5-317 OF THIS SUBTITLE if:

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

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

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

27 (c) The guardian shall mail the notice required by this section to each natural
28 parent AND TO A CHILD WHOSE CONSENT IS REQUIRED UNDER § 5-317 OF THIS
29 SUBTITLE at the last address known to the guardian.

30 (d) A natural parent OR A CHILD WHOSE CONSENT IS REQUIRED UNDER §
31 5-317 OF THIS SUBTITLE may waive the right to notice under this section. The waiver
32 shall appear expressly in:

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

35 (2) the decree of guardianship.

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

1 (1) be filed with the court; and

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

3 (f) On receipt of the guardian's report under subsection (b) of this section, and
4 every 12 months thereafter, the court:

5 (1) shall hold a hearing to review the progress which has been made
6 toward the child's adoption and to review whether the child's current placement and
7 circumstances are in the child's best interest; and

8 (2) shall then take whatever action the court considers appropriate in
9 the child's best interest.

10 (g) (1) Further reports, notices to the natural parents, TO THE CHILD'S
11 COURT-APPOINTED COUNSEL, AND TO A CHILD WHOSE CONSENT IS REQUIRED
12 UNDER § 5-317 OF THIS SUBTITLE, and hearings are not required if the court
13 determines after a hearing that it is in the best interest of the child to remain with a
14 specified family which agrees to the long-term placement.

15 (2) If the long-term placement is subsequently changed, the child is
16 entitled to annual hearings under subsection (f) of this section.

17 (h) The court may require the guardian to file periodic written progress
18 reports on the child's status, with recommendations for further supervision,
19 treatment, or rehabilitation.

20 (i) If guardianship with the right to consent to adoption or long-term care
21 short of adoption has been ordered by an equity court, the jurisdiction of the equity
22 court over the child may continue until that individual reaches 21 years of age, unless
23 terminated sooner.

24 5-322.

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

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

33 1. the attorney who represented a natural parent in the
34 juvenile proceeding; and

35 2. IF THE CHILD IS AT LEAST 10 YEARS OLD ON THE DATE
36 THE PETITION IS FILED, the attorney who represented the [minor] child in the
37 juvenile proceeding.

1 (2) A person whose consent is filed with the petition need not be given
2 notice if the consent includes a waiver of the right to notice of the filing of the petition.

3 (3) The petitioner shall give notice by entry and service of a show cause
4 order sent to the last known address that the petitioner has for each person whose
5 consent is required.

6 (b) If a petition for guardianship is filed after a juvenile proceeding in which
7 the child has been adjudicated to be a child in need of assistance, the petitioner shall
8 give notice to the child's natural parent by serving a show cause order by certified
9 mail or private process on the natural parent:

10 (1) if the natural parent was present at a CINA hearing and notified by
11 the court of the requirements of § 3-837 of the Courts Article:

12 (i) at the latest address listed in juvenile court records maintained
13 in accordance with § 3-837 of the Courts Article;

14 (ii) at the latest address listed in the records of the local
15 department of social services; or

16 (iii) at any other address listed in the records of the juvenile court or
17 local department of social services within 6 months before the filing of the
18 guardianship petition; or

19 (2) if the natural parent was not present at a CINA hearing and notified
20 by the court of the requirements of § 3-837 of the Courts Article:

21 (i) at the latest address, if any, listed in juvenile court records
22 maintained in accordance with § 3-837 of the Courts Article; or

23 (ii) at any other address for the natural parent identified after
24 reasonable good faith efforts to locate the parent.

25 (C) (1) **IF A PETITION FOR GUARDIANSHIP IS FILED AFTER A JUVENILE**
26 **PROCEEDING IN WHICH THE CHILD HAS BEEN ADJUDICATED TO BE A CHILD IN NEED**
27 **OF ASSISTANCE, AND THE CHILD IS AT LEAST 10 YEARS OLD ON THE DATE THE**
28 **PETITION IS FILED, THE ATTORNEY FOR THE CHILD MAY FILE A NOTICE OF**
29 **OBJECTION ON BEHALF OF THE CHILD IN ACCORDANCE WITH PARAGRAPH (2) OF**
30 **THIS SUBSECTION.**

31 (2) (I) **A NOTICE OF OBJECTION SHALL BE VERIFIED AND SHALL**
32 **STATE THAT:**

33 1. **THE CHILD HAS A SIGNIFICANT EMOTIONAL**
34 **RELATIONSHIP WITH THE NATURAL PARENT THAT WAS MAINTAINED THROUGH**
35 **VISITS, TELEPHONE CONTACT, OR WRITTEN COMMUNICATION;**

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

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

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

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

13 (i) the State Motor Vehicle Administration;

14 (ii) the local department of social services;

15 (iii) the State Department of Public Safety and Correctional
16 Services;

17 (iv) the State Division of Parole and Probation;

18 (v) the detention center for the local jurisdiction in which the
19 petition is filed;

20 (vi) the records of the juvenile court for the jurisdiction in which the
21 petition is filed;

22 (vii) a particular social services agency or detention facility, if the
23 local department is aware that the parent has received benefits from that social
24 services agency, or has been confined in that detention facility, within the 9 months
25 preceding the filing of the petition; and

26 (viii) each of the following individuals that the petitioner is able to
27 locate and contact:

28 1. the other parent of the child;

29 2. known members of the parent's immediate family; and

30 3. the parent's current or last known employer.

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
2 measure, is necessary for the immediate preservation of the public health and safety,
3 has been passed by a yea and nay vote supported by three-fifths of all the members
4 elected to each of the two Houses of the General Assembly, and shall take effect from
5 the date it is enacted.