

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 707 (Delegates Montague and Doory)
Judiciary

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

This emergency bill clarifies the rights of a child subject to a petition for guardianship, including the right to receive notice of and object to the petition.

Fiscal Summary

State Effect: The bill would not materially affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that in order to grant a decree awarding guardianship, the court must have the consent of the child if the child is at least ten years old. If, however, the court finds by clear and convincing evidence that it is in the best interest of the child to terminate the natural parent's rights and certain other circumstances exist, the court may grant a decree of guardianship without the consent of the child.

If a petition for guardianship is filed after a juvenile proceeding in which a child who is at least ten years old has been adjudicated to be a child in need of assistance, the attorney for the child may file a notice of objection to the guardianship on behalf of the child. In cases where the child files an objection, but each living natural parent has given consent

to the guardianship, the court must appoint a guardian *ad litem* or a court-appointed special advocate for the child.

In a case where a child's placement with an adoptive family has been disrupted, the appointed guardian of the child must give notice of such disruption to the child if that child's consent was required to institute the guardianship initially. The child may waive the right to such notice. In addition, further notice to the child is not required if the court determines that it is in the best interest of the child to remain with a specified family in a long-term placement.

If a petition for guardianship is filed after a juvenile proceeding in which the child has been adjudicated to be a child in need of assistance, a neglected child, or an abused child, the petitioner is only required to notify the attorney who represented a child in a previous child in need of assistance proceeding of the filing of the petition if the child is at least ten years old on the date the petition is filed.

Current Law: In general, a court may grant a decree awarding guardianship only: (1) after any investigation and hearing the court considers necessary; and (2) with the consent of each living natural parent of the child. If, however, the court finds by clear and convincing evidence that it is in the best interest of the child to terminate the natural parent's rights and certain other circumstances exist, the court may grant a decree of guardianship without the consent of the natural parent.

In a case where a child's placement with an adoptive family has been disrupted, the appointed guardian of the child must give notice of such disruption to the child's natural parent and to the child's counsel.

If a petition for guardianship is filed after a juvenile proceeding in which the child has been adjudicated to be a child in need of assistance, a neglected child, or an abused child, the petitioner is required to notify the attorney who represented the natural parent in the juvenile proceeding and the attorney who represented the minor child in the juvenile proceeding.

Background: This bill addresses the holding in a recent Maryland Court of Appeals case clarifying the rights of a child who is the subject of a petition to terminate parental rights. In that decision, the court found that a child who is the subject of a petition to terminate parental rights: (1) is a party to the action; (2) is entitled to representation by counsel in the proceedings on the petition; (3) is entitled to receive notice of an objection to the petition; and (4) upon timely objection, is entitled to a hearing on the merits of the petition.

Additional Information

Prior Introductions: A similar bill was introduced during the 2000 session as HB 1422, and was withdrawn before committee action.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader – March 6, 2001
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