

SENATE BILL 186

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2002 Regular Session
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CF 2lr0798

By: **Senators Kelley, Blount, Conway, Della, Hooper, Jacobs, Lawlah,
Mitchell, Mooney, Neall, Sfikas, Stoltzfus, and Van Hollen**

Introduced and read first time: January 17, 2002

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Education - Children in Out-of-County Living Arrangements - Informal**
3 **Kinship Care**

4 FOR the purpose of requiring a superintendent of schools of a county to allow a child
5 to attend a public school in the county other than where the child was previously
6 domiciled in Maryland with the child's parent or legal guardian if the child lives
7 with a relative in the county due to a serious family hardship; altering a certain
8 definition; defining certain terms; requiring certain relatives of a child to file
9 affidavits under certain circumstances; establishing a form for certain
10 affidavits; requiring certain affidavits to be provided free of charge at certain
11 offices; authorizing certain relatives to make educational and health care
12 decisions for children in their custody; authorizing certain relatives to apply for
13 entitlements for certain children; and generally relating to children in
14 out-of-county living arrangements.

15 BY repealing and reenacting, with amendments,
16 Article - Education
17 Section 4-122(a) and 7-101
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2001 Supplement)

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

22 **Article - Education**

23 4-122.

24 (a) (1) In this section the following words shall have the meanings indicated.

25 (2) "Local current expense per student" means all expenditures made by
26 a county from county appropriations, except State, federal, and other aid, for public
27 elementary and secondary education in the prior fiscal year, divided by the full-time
28 equivalent enrollment, as defined in § 5-202(a) of this article.

1 (3) "Child in an out-of-county living arrangement" means a child who is:

2 (I) [placed] PLACED by a State agency, a licensed child placement
3 agency as provided by § 5-507 of the Family Law Article, or a court in a county other
4 than where the child's parent or legal guardian [resides. Child in an out-of-county
5 living arrangement does not include a child] RESIDES; OR

6 (II) [living] DOMICILED with a [relative, stepparent or a person
7 exercising temporary care, custody or control over a child at the request of a parent or
8 guardian of the child] RELATIVE WHO EXERCISES CARE, CUSTODY, AND CONTROL
9 OVER THE CHILD 24 HOURS A DAY AND 7 DAYS A WEEK.

10 (4) "Service providing local education agency" means the local education
11 agency for the county where a child in an out-of-county living arrangement is placed.

12 (5) "Financially responsible county" means the county where the parent
13 or legal guardian of a child in an out-of-county living arrangement resides. If the
14 parents of the child live apart, the financially responsible county is:

15 (i) The county where the parent who has been awarded custody of
16 the child resides;

17 (ii) If custody has not been awarded, the county where the parent
18 with whom the child lives when not in a foster care home, INFORMAL KINSHIP CARE
19 HOME, or residential facility resides;

20 (iii) If custody has been awarded to both parents and the parents
21 reside in different counties, both counties shall be considered financially responsible
22 and shall pay one-half the amount as computed in accordance with subsection (c) of
23 this section, except that if the child receives a public education in a county where a
24 parent resides, this subparagraph shall not apply; or

25 (iv) If custody has been awarded to both parents and one parent
26 resides in a county and the other resides out-of-state, the county shall be considered
27 the financially responsible county.

28 7-101.

29 (a) All individuals who are 5 years old or older and under 21 shall be admitted
30 free of charge to the public schools of this State.

31 (b) (1) Except as provided in § 7-301 of this title and in paragraph (2) of this
32 subsection, each child shall attend a public school in the county where the child is
33 domiciled with the child's parent or guardian.

34 (2) Upon request and in accordance with a county board's policies
35 concerning residency, a county superintendent may allow a child to attend school in
36 the county even if the child is not domiciled in that county with the child's parent or
37 guardian.

1 (3) If a child fraudulently attends a public school in a county where the
2 child is not domiciled with the child's parent or guardian, the child's parent or
3 guardian shall be subject to a penalty payable to the county for the pro rata share of
4 tuition for the time the child fraudulently attends a public school in the county.

5 [(4) Nothing in this section alters the requirements for out-of-county
6 placements contained in § 4-122 and Title 8, Subtitles 3 and 4 of this article or in any
7 other State or federal law.]

8 (C) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
9 MEANINGS INDICATED.

10 (II) "INFORMAL KINSHIP CARE" MEANS A LIVING ARRANGEMENT
11 WHERE A RELATIVE OF A CHILD PROVIDES FOR THE CARE AND CUSTODY OF THE
12 CHILD WHO IS NOT IN THE CARE, CUSTODY, OR GUARDIANSHIP OF THE LOCAL
13 DEPARTMENT.

14 (III) "RELATIVE" MEANS AN ADULT RELATED TO THE CHILD BY
15 BLOOD OR MARRIAGE WITHIN THE FIFTH DEGREE OF CONSANGUINITY.

16 (IV) "SERIOUS FAMILY HARDSHIP" MEANS:

- 17 1. DEATH OF A PARENT OF THE CHILD;
- 18 2. SERIOUS ILLNESS OF A PARENT OF THE CHILD;
- 19 3. DRUG ADDICTION OF A PARENT OF THE CHILD;
- 20 4. INCARCERATION OF A PARENT OF THE CHILD; OR
- 21 5. ABANDONMENT BY A PARENT OF THE CHILD.

22 (2) A COUNTY SUPERINTENDENT SHALL ALLOW A CHILD WHO IS A
23 RESIDENT OF THIS STATE TO ATTEND A PUBLIC SCHOOL IN A COUNTY OTHER THAN
24 THE COUNTY WHERE THE CHILD IS DOMICILED WITH THE CHILD'S PARENT OR
25 LEGAL GUARDIAN IF THE CHILD LIVES WITH A RELATIVE IN THE COUNTY DUE TO A
26 SERIOUS FAMILY HARDSHIP THAT THE RELATIVE VERIFIES THROUGH A SWORN
27 AFFIDAVIT.

28 (3) THE AFFIDAVIT SHALL INCLUDE:

- 29 (I) THE NAME AND DATE OF BIRTH OF THE CHILD;
- 30 (II) THE NAME AND ADDRESS OF THE CHILD'S PARENT;
- 31 (III) THE NAME AND ADDRESS OF THE RELATIVE WHO HAS CARE OF
32 THE CHILD;
- 33 (IV) THE DATE THE RELATIVE ASSUMED CARE OF THE CHILD;
- 34 (V) THE NATURE OF THE SERIOUS FAMILY HARDSHIP;

1 (VI) THE CARETAKER'S KINSHIP RELATION TO THE CHILD;

2 (VII) THE NAME AND ADDRESS OF THE SCHOOL THE CHILD
3 PREVIOUSLY ATTENDED;

4 (VIII) NOTICE THAT THE COUNTY SUPERINTENDENT MAY VERIFY
5 THE FACTS GIVEN BY THE RELATIVE IN THE AFFIDAVIT AND CONDUCT AN AUDIT OF
6 THE CASE AFTER THE CHILD HAS BEEN ENROLLED IN THE COUNTY PUBLIC SCHOOL
7 SYSTEM;

8 (IX) NOTICE THAT IF FRAUD OR MISREPRESENTATION IS
9 DISCOVERED DURING AN AUDIT, THE COUNTY SUPERINTENDENT SHALL REMOVE
10 THE CHILD FROM THE COUNTY PUBLIC SCHOOL SYSTEM ROLL; AND

11 (X) NOTICE THAT ANY PERSON WHO WILLFULLY MAKES A
12 MATERIAL MISREPRESENTATION IN THE AFFIDAVIT SHALL BE SUBJECT TO A
13 PENALTY PAYABLE TO THE COUNTY FOR THREE TIMES THE PRO RATA SHARE OF
14 TUITION FOR THE TIME THE CHILD FRAUDULENTLY ATTENDS A PUBLIC SCHOOL IN
15 THE COUNTY.

16 (4) THE AFFIDAVIT SHALL BE IN THE FOLLOWING FORM:

17 (I) I, THE UNDERSIGNED, AM OVER EIGHTEEN (18) YEARS OF AGE
18 AND COMPETENT TO TESTIFY TO THE FACTS AND MATTERS SET FORTH HEREIN.

19 (II) _____ (NAME OF CHILD), WHOSE DATE OF BIRTH IS
20 _____, IS LIVING WITH ME BECAUSE OF THE FOLLOWING SERIOUS FAMILY
21 HARDSHIP: (CHECK EACH THAT IS APPLICABLE)

22 _____DEATH OF FATHER/MOTHER/LEGAL GUARDIAN

23 _____SERIOUS ILLNESS OF FATHER/MOTHER/LEGAL GUARDIAN

24 _____DRUG ADDICTION OF FATHER/MOTHER/LEGAL GUARDIAN

25 _____INCARCERATION OF FATHER/MOTHER/LEGAL GUARDIAN

26 _____ABANDONMENT BY FATHER/MOTHER/LEGAL GUARDIAN

27 (III) THE NAME AND LAST KNOWN ADDRESS OF THE CHILD'S
28 PARENT(S) OR LEGAL GUARDIAN IS:

29 _____
30 _____
31 _____

32 (IV) MY KINSHIP RELATION TO THE CHILD IS _____

33 (V) MY ADDRESS IS:

1 _____
2 STREET APT. NO.

3 _____
4 CITY STATE ZIP CODE

5 (VI) I ASSUMED CARE OF THIS CHILD FOR 24 HOURS A DAY AND 7
6 DAYS A WEEK ON _____(DAY/MONTH/YEAR).

7 (VII) THE NAME AND ADDRESS OF THE LAST SCHOOL THAT THE
8 CHILD ATTENDED IS: _____
9 _____

10 (VIII) THE COUNTY SUPERINTENDENT MAY VERIFY THE FACTS
11 CONTAINED IN THE FOREGOING AFFIDAVIT AND CONDUCT AN AUDIT ON A
12 CASE-BY-CASE BASIS AFTER THE CHILD HAS BEEN ENROLLED IN THE COUNTY
13 PUBLIC SCHOOL SYSTEM. IF THE COUNTY SUPERINTENDENT DISCOVERS FRAUD OR
14 MISREPRESENTATION, THE CHILD SHALL BE REMOVED FROM THE COUNTY PUBLIC
15 SCHOOL SYSTEM ROLL.

16 (IX) I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY
17 THAT THE CONTENTS OF THE FOREGOING ARE TRUE TO THE BEST OF MY
18 KNOWLEDGE, INFORMATION, AND BELIEF.

19 _____
20 SIGNATURE OF AFFIANT

21 _____
22 (DAY/MONTH/YEAR)

23 (X) ANY PERSON WHO WILLFULLY MAKES A MATERIAL
24 MISREPRESENTATION IN THIS AFFIDAVIT SHALL BE SUBJECT TO A PENALTY
25 PAYABLE TO THE COUNTY FOR THREE TIMES THE PRO RATA SHARE OF TUITION FOR
26 THE TIME THE CHILD FRAUDULENTLY ATTENDS A PUBLIC SCHOOL IN THE COUNTY.

27 (5) AFFIDAVIT FORMS THAT COMPLY WITH SUBSECTION (C)(4) OF THIS
28 SECTION SHALL BE MADE AVAILABLE FREE OF CHARGE AT THE OFFICES OF EACH
29 COUNTY BOARD OF EDUCATION, EACH LOCAL DEPARTMENT OF SOCIAL SERVICES,
30 AND EACH LOCAL AREA AGENCY ON AGING.

31 (6) IF A CHANGE OCCURS IN THE CARE OR IN THE SERIOUS FAMILY
32 HARDSHIP OF THE CHILD, THE RELATIVE CARING FOR THE CHILD SHALL NOTIFY
33 THE LOCAL SCHOOL SYSTEM IN WRITING WITHIN 30 DAYS AFTER THE CHANGE
34 OCCURS.

35 (7) (I) AN INFORMAL KINSHIP CARE AFFIDAVIT MAY BE FILED
36 DURING A SCHOOL YEAR.

1 (II) THE RELATIVE SHALL FILE AN AFFIDAVIT ANNUALLY AT LEAST
2 2 WEEKS PRIOR TO THE BEGINNING OF THE SCHOOL YEAR FOR EACH YEAR THE
3 CHILD CONTINUES TO LIVE WITH THE RELATIVE BECAUSE OF A SERIOUS FAMILY
4 HARDSHIP.

5 (8) UNLESS THE COURT APPOINTS A GUARDIAN FOR THE CHILD OR
6 AWARDS CUSTODY OF THE CHILD TO SOMEONE OTHER THAN THE RELATIVE WHO
7 HAS CARE OF THE CHILD, THE RELATIVE WHO HAS CARE OF THE CHILD SHALL MAKE
8 THE FULL RANGE OF EDUCATIONAL AND HEALTH CARE DECISIONS FOR THE CHILD.

9 (9) THE RELATIVE WHO HAS CARE OF THE CHILD HAS AUTHORITY TO
10 MAKE EDUCATIONAL DECISIONS AND MAY APPLY ON BEHALF OF THE CHILD FOR
11 ALL HEALTH CARE AND PUBLIC ASSISTANCE ENTITLEMENTS FOR WHICH THE CHILD
12 MAY BE ELIGIBLE.

13 (10) THE PARENT OR LEGAL GUARDIAN OF A CHILD IN AN
14 OUT-OF-COUNTY LIVING ARRANGEMENT SHALL HAVE FINAL DECISION MAKING
15 AUTHORITY REGARDING THE EDUCATIONAL NEEDS OF THE CHILD.

16 [(c)] (D) There shall be full kindergarten programs in each county of this
17 State.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 July 1, 2002.