
By: **Delegates Zirkin and Morhaim**

Introduced and read first time: February 6, 2003

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Children with Disabilities - Individual Treatment Plans**

3 FOR the purpose of requiring the juvenile court, in a child in need of assistance
4 disposition hearing, to take certain actions if the court finds that a child is in
5 need of assistance solely because of a developmental disability or mental
6 disorder under certain circumstances; prohibiting the juvenile court from
7 changing a child's custody status under certain circumstances; authorizing
8 juvenile court to order a local department of social services or the Department of
9 Health and Mental Hygiene to take certain actions under certain circumstances;
10 defining certain terms; making certain conforming changes; and generally
11 relating to children with disabilities.

12 BY repealing and reenacting, with amendments,
13 Article - Courts and Judicial Proceedings
14 Section 3-801 and 3-819(b) and (c)
15 Annotated Code of Maryland
16 (2002 Replacement Volume)

17 BY repealing and reenacting, without amendments,
18 Article - Courts and Judicial Proceedings
19 Section 3-819(a)
20 Annotated Code of Maryland
21 (2002 Replacement Volume)

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

24 **Article - Courts and Judicial Proceedings**

25 3-801.

26 (a) In this subtitle the following words have the meanings indicated.

27 (b) "Abuse" means:

1 (1) Sexual abuse of a child, whether a physical injury is sustained or not;
2 or

3 (2) Physical or mental injury of a child under circumstances that
4 indicate that the child's health or welfare is harmed or is at substantial risk of being
5 harmed by:

6 (i) A parent or other individual who has permanent or temporary
7 care or custody or responsibility for supervision of the child; or

8 (ii) A household or family member.

9 (c) "Adjudicatory hearing" means a hearing under this subtitle to determine
10 whether the allegations in the petition, other than the allegation that the child
11 requires the court's intervention, are true.

12 (d) "Adult" means an individual who is at least 18 years old.

13 (e) "Child" means an individual under the age of 18 years.

14 (f) "Child in need of assistance" means a child who requires court intervention
15 because:

16 (1) The child has been abused, has been neglected, has a developmental
17 disability, or has a mental disorder; and

18 (2) The child's parents, guardian, or custodian are unable or unwilling to
19 give proper care and attention to the child and the child's needs.

20 (g) "CINA" means a child in need of assistance.

21 (h) "Commit" means to transfer custody.

22 (i) "Court" means the circuit court for a county sitting as the juvenile court.

23 (j) "Custodian" means a person or governmental agency to whom custody of a
24 child has been given by order of court, including a court other than the juvenile court.

25 (k) "Custody" means the right and obligation, unless otherwise determined by
26 the court, to provide ordinary care for a child and determine placement.

27 (l) "Developmental disability" means a severe chronic disability of an
28 individual that:

29 (1) Is attributable to a physical or mental impairment, other than the
30 sole diagnosis of mental illness, or to a combination of mental and physical
31 impairments;

32 (2) Is likely to continue indefinitely;

1 (3) Results in an inability to live independently without external support
2 or continuing and regular assistance; and

3 (4) Reflects the need for a combination and sequence of special,
4 interdisciplinary, or generic care, treatment, or other services that are individually
5 planned and coordinated for the individual.

6 (m) "Disposition hearing" means a hearing under this subtitle to determine:

7 (1) Whether a child is in need of assistance; and

8 (2) If so, the nature of the court's intervention to protect the child's
9 health, safety, and well-being.

10 (n) "Guardian" means a person to whom guardianship of a child has been
11 given by order of court, including a court other than the juvenile court.

12 (o) "Guardianship" means an award by a court, including a court other than
13 the juvenile court, of the authority to make ordinary and emergency decisions as to
14 the child's care, welfare, education, physical and mental health, and the right to
15 pursue support.

16 (P) "INDIVIDUAL TREATMENT PLAN" MEANS A COURT-ORDERED PLAN
17 DEVELOPED FOR A CHILD WITH A DEVELOPMENTAL DISABILITY OR MENTAL
18 DISORDER THAT INCLUDES ALL APPROPRIATE AND NECESSARY SERVICES,
19 INCLUDING HOME- AND COMMUNITY- BASED SERVICES, TREATMENT, AND SUPPORT
20 TO MEET THE NEEDS OF THE CHILD AND THAT IDENTIFIES EACH STATE OR LOCAL
21 AGENCY OR PRIVATE RESOURCE THAT WILL PROVIDE AND PAY FOR EACH SERVICE.

22 (Q) "LEAST RESTRICTIVE ENVIRONMENT" MEANS:

23 (1) THE CHILD'S FAMILY HOME; OR

24 (2) WHEN THE INDIVIDUAL NEEDS OF THE CHILD CANNOT REASONABLY
25 BE MET IN THE FAMILY HOME, THE MOST HOMELIKE SETTING FOR THE CHILD, WITH
26 A PREFERENCE FOR RESIDENCE IN THE SAME COMMUNITY AS THE CHILD'S FAMILY
27 SO THE CHILD MAY CONTINUE TO ATTEND THE SAME SCHOOL AND MAINTAIN
28 MAXIMUM CONTACT WITH THE CHILD'S FAMILY AND COMMUNITY.

29 [(p)] (R) "Local department" means the local department of social services for
30 the county in which the court is located.

31 [(q)] (S) (1) "Mental disorder" means a behavioral or emotional illness that
32 results from a psychiatric or neurological disorder.

33 (2) "Mental disorder" includes a mental illness that so substantially
34 impairs the mental or emotional functioning of an individual as to make care or
35 treatment necessary or advisable for the welfare of the individual or for the safety of
36 the person or property of another.

1 (3) "Mental disorder" does not include mental retardation.

2 [(r)] (T) "Mental injury" means the observable, identifiable, and substantial
3 impairment of a child's mental or psychological ability to function.

4 [(s)] (U) "Neglect" means the leaving of a child unattended or other failure to
5 give proper care and attention to a child by any parent or individual who has
6 permanent or temporary care or custody or responsibility for supervision of the child
7 under circumstances that indicate:

8 (1) That the child's health or welfare is harmed or placed at substantial
9 risk of harm; or

10 (2) That the child has suffered mental injury or been placed at
11 substantial risk of mental injury.

12 [(t)] (V) "Parent" means a natural or adoptive parent whose parental rights
13 have not been terminated.

14 [(u)] (W) (1) "Party" means:

15 (i) A child who is the subject of a petition;

16 (ii) The child's parent, guardian, or custodian;

17 (iii) The petitioner; or

18 (iv) An adult who is charged under § 3-828 of this subtitle.

19 (2) "Party" does not include a foster parent.

20 [(v)] (X) (1) "Sexual abuse" means an act that involves sexual molestation
21 or sexual exploitation of a child by:

22 (i) A parent or other individual who has permanent or temporary
23 care or custody or responsibility for supervision of the child; or

24 (ii) A household or family member.

25 (2) "Sexual abuse" includes:

26 (i) Incest;

27 (ii) Rape;

28 (iii) Sexual offense in any degree;

29 (iv) Sodomy; and

30 (v) Unnatural or perverted sexual practices.

1 [(w)] (Y) "Shelter care" means a temporary placement of a child outside of the
2 home at any time before disposition.

3 [(x)] (Z) "Shelter care hearing" means a hearing held before disposition to
4 determine whether the temporary placement of the child outside of the home is
5 warranted.

6 [(y)] (AA) "TPR proceeding" means a proceeding to terminate parental rights.
7 3-819.

8 (a) (1) Unless a petition under this subtitle is dismissed, the court shall hold
9 a separate disposition hearing after an adjudicatory hearing to determine whether
10 the child is a CINA.

11 (2) The disposition hearing shall be held on the same day as the
12 adjudicatory hearing unless on its own motion or motion of a party, the court finds
13 that there is good cause to delay the disposition hearing to a later day.

14 (3) If the court delays a disposition hearing, it shall be held no later than
15 30 days after the conclusion of the adjudicatory hearing unless good cause is shown.

16 (b) (1) In making a disposition on a petition under this subtitle, the court
17 shall:

18 [(1)] (I) Find that the child is not in need of assistance and, except as
19 provided in subsection (e) of this section, dismiss the case; or

20 [(2)] (II) Find that the child is in need of assistance and:

21 [(i)] 1. Not change the child's custody status; or

22 [(ii)] 2. Commit the child to the custody of:

23 [1.] A. A parent, relative, or other individual on terms the
24 court considers appropriate; or

25 [2.] B. A local department, the Department of Health and
26 Mental Hygiene, or both, on terms that the court considers appropriate, including
27 designation of the type of facility where the child is to be placed.

28 (2) IF THE COURT FINDS THAT THE CHILD IS IN NEED OF ASSISTANCE
29 SOLELY BECAUSE OF THE CHILD'S NEEDS, CARE, OR TREATMENT FOR A
30 DEVELOPMENTAL DISABILITY OR A MENTAL DISORDER AND THE CHILD'S PARENTS,
31 GUARDIAN, OR CUSTODIAN ARE UNABLE TO PROVIDE THE CARE OR TREATMENT,
32 THE COURT:

33 (I) SHALL MAKE A FINDING AS TO WHETHER REASONABLE
34 EFFORTS WERE MADE TO MEET THE HEALTH AND SAFETY NEEDS OF THE CHILD
35 AND, WHERE POSSIBLE, TO PRESERVE THE FAMILY:

1 (II) SHALL JOIN THE DEPARTMENT OF HEALTH AND MENTAL
2 HYGIENE AS A PARTY;

3 (III) MAY NOT CHANGE THE CHILD'S CUSTODY STATUS; AND

4 (IV) MAY ORDER THE LOCAL DEPARTMENT AND THE DEPARTMENT
5 OF HEALTH AND MENTAL HYGIENE:

6 1. TO DEVELOP AN INDIVIDUAL TREATMENT PLAN FOR THE
7 CHILD, WITH INPUT FROM THE CHILD'S FAMILY, THAT SHALL BE SUBMITTED TO THE
8 COURT WITHIN 30 DAYS; AND

9 2. TO PROVIDE SERVICES TO THE CHILD IN THE LEAST
10 RESTRICTIVE ENVIRONMENT BASED ON THE CHILD'S INDIVIDUAL TREATMENT PLAN.

11 (c) In addition to any action under subsection [(b)(2)] (B)(1) of this section, the
12 court may:

13 (1) (i) Place a child under the protective supervision of the local
14 department on terms the court considers appropriate;

15 (ii) Grant limited guardianship to the department or an individual
16 or both for specific purposes including medical and educational purposes or for other
17 appropriate services if a parent is unavailable, unwilling, or unable to consent to
18 services that are in the best interest of the child; or

19 (iii) Order the child and the child's parent, guardian, or custodian to
20 participate in rehabilitative services that are in the best interest of the child and
21 family; and

22 (2) Determine custody, visitation, support, or paternity of a child in
23 accordance with § 3-803(b) of this subtitle.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2003.