

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 522 (Delegate Zirkin, *et al.*)

Health and Government Operations

Judicial Proceedings

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Children with Disabilities - Voluntary Placements

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This bill makes specific requirements and authorizations for a court in a disposition for a child found to be in need of assistance who receives that designation solely because the child has a developmental disability or mental disorder for which the parents, guardian, or custodian cannot provide the care or treatment. The bill directs the Social Services Administration (SSA) to establish a program of out-of-home placement through a voluntary placement agreement that will allow parents to obtain services for their children without giving up custody.

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Fiscal Summary

**State Effect:** It is expected that the bill's requirements could be handled with existing resources.

**Local Effect:** It is expected that the bill's requirements could be handled with existing resources.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** If a court finds that a child is in need of assistance solely because of the child's need for care or treatment as a result of a developmental disability or mental disorder and the child's parents, guardian, or custodian cannot provide the care or treatment necessary, the court must make a finding as to whether reasonable efforts were made to meet the child's care and treatment needs and, where possible, preserve the family, and may not change the child's custody status.

The court must hold a voluntary placement disposition hearing within 30 days after the petition is filed, unless the petition is dismissed. A voluntary placement disposition hearing is a hearing to obtain a judicial determination as to whether a voluntary placement is in the best interests of the child. The court must determine whether continuing the placement is in the child's best interest and whether reasonable efforts were made to reunite the child with the family or place the child in a timely manner according to the child's permanency plan.

In making a disposition on the voluntary placement petition, the court must:

- order the child's voluntary placement terminated and the child returned to the child's home and provided with available services and support needed to remain at home;
- order the child's voluntary placement to continue if the local department of social services and the child's parent or guardian continue to agree to the voluntary placement;
- order an amendment to the voluntary placement agreement to address the child's needs; or
- order the local department of social services to file a child in need of assistance (CINA) petition if one is necessary to ensure the child's care, protection, safety, and mental and physical development.

The court must hold a permanency planning hearing no later than 11 months after a child in a voluntary placement enters an out-of-home placement to determine the permanency plan for the child, and have a hearing to review the permanency plan at least every six months thereafter until the voluntary placement is terminated.

A voluntary placement agreement is defined as a binding, written agreement voluntarily entered into between a local department of social services and the parent or legal guardian of a minor child, that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or guardian, the child, and the local department while the child is in placement. SSA must establish an out-of-home placement program for minor children, who, with the approval of SSA, are placed in an out-of-home placement by a local department of social services pursuant to a voluntary placement agreement.

A local department of social services may not seek legal custody of a child with a developmental disability or mental illness who has been placed in a voluntary placement agreement if the purpose of the placement is to obtain treatment or care related to the disability that the parent cannot provide. A court may not order such a child committed

to the local department's custody. Such a child may remain in an out-of-home placement for more than 180 days if the child's disability or illness requires care or treatment for more than 180 days, and if the juvenile court determines that continuation of the placement is in the child's best interests.

The local department may not seek to have, and a court may not order, a child with a mental illness or developmental disability committed to the local department's custody solely because the child's parents are financially unable to provide treatment or care for the child. SSA must adopt regulations to that effect.

## **Current Law:**

### *Definitions*

A child in need of assistance (CINA) is a child who requires court intervention because the child was abused or neglected, has a developmental disability, or has a mental disorder. In addition, the child's parents, guardian, or custodian are unable or unwilling to give the child proper care and attention.

A developmental disability is a severe, chronic disability of an individual that: (1) is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or a combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in an inability to live independently without outside support or continuing and regular assistance; and (4) reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services individually planned and coordinated for the individual.

A mental disorder is a behavioral or emotional illness resulting from a psychiatric or neurological disorder. It includes a mental illness that substantially impairs an individual's mental or emotional functioning as to make care or treatment necessary or advisable for the individual's welfare or for the safety of the person or property of another. Mental disorder does not include mental retardation.

### *CINA Disposition Hearings*

A court must hold a separate CINA disposition hearing after an adjudicatory hearing to determine whether the child is a CINA, unless the CINA petition is dismissed. The CINA disposition hearing must be held on the same day as the adjudicatory hearing unless the court finds there is a good reason to delay the hearing. A CINA disposition hearing can be delayed for no more than 30 days after the adjudicatory hearing unless good cause is shown.

In making a disposition on a CINA petition, the court must: (1) find that the child is not in need of assistance and dismiss the case; or (2) find that the child needs assistance and either not change the child's custody status or commit the child to the custody of a parent, relative, or other individual or to a local department of social services, the Department of Health and Mental Hygiene (DHMH), or both.

After a CINA disposition, when the circuit court orders a specific placement for the child, a local department of social services may remove the child from the placement before a hearing only if: removal is required to protect the child from serious immediate danger; the child's continued court-ordered placement is contrary to the child's welfare; or the person or agency with whom the child is placed requests the child's immediate removal.

### *Out-of-home Placement*

SSA must establish an out-of-home placement program for minor children: placed in the custody of a local department of social services by a parent or legal guardian for not more than six months under a voluntary written agreement; or who are abused, abandoned, neglected, or dependent if a juvenile court has determined that continued residence in the child's home is contrary to the child's welfare, and has committed the child to the custody or guardianship of a local department.

In establishing an out-of-home placement program, SSA must provide time-limited family reunification services to the child and the parents or guardian of the child to facilitate the child's safe and appropriate reunification within a timely manner. SSA must also concurrently develop and implement a permanency plan that is in the child's best interest.

The local department of social services must provide 24 hour a day care and supportive services for a child who is committed to its custody or guardianship in a short-term out-of-home placement. A child may not be committed to the custody of a local department and placed in out-of-home placement solely because the child's parent or guardian lacks shelter. The local department must refer a homeless family with a child to emergency shelter and other services.

### *Voluntary Placements*

A child may be placed in the custody of a local department of social services, under a voluntary, written agreement, for a period of not more than six months. Regulations of the Department of Human Resources (DHR) mandate that, except for children for whom a parent has signed a voluntary consent to adoption, a child may only remain in an out-of-home placement for more than six months if a juvenile court has committed the child to the local department's custody.

**Background:** Governor Robert L. Ehrlich, Jr. issued an Executive Order January 17, 2003 establishing a 17-member Council on Parental Relinquishment of Custody to Obtain Health Care Services. The council will: review child custody relinquishment procedures and practices at the State and local levels; identify and analyze long-term alternatives to forced child custody relinquishment; and identify and provide a summary of costs and benefits of federal resources available to Maryland. The Governor's Office for Children, Youth, and Families will staff the council. The council must report its findings and recommendations to the Governor by September 1, 2003, when the council terminates.

The Federal Adoption and Safe Families Act (ASFA) enables federal financial assistance to states for foster care and other out-of-home placements. However, ASFA sets eligibility standards for funding. One of the requirements is that removal of a child must have been pursuant to a voluntary placement agreement or the result of a judicial determination that continuation in the family would be contrary to the child's welfare and that reasonable efforts were made to reunify the family. A federal payment may not be made for a child who remains in a voluntary placement outside the home in excess of 180 days unless there has been a judicial determination by a court (within the first 180 days) that the voluntary placement was in the best interest of the child.

**State and Local Fiscal Effect:** It is expected that the bill's requirements could be met within the existing resources of DHR, DHMH, local departments of social services, and the juvenile courts because the bill is not expected to generate an increase in the number of children receiving court-ordered services. Ten to 15 children receive voluntary placements annually. The children eligible for services under this bill are currently eligible for services under "Child in Need of Assistance" (CINA) provisions. However, this bill specifically provides that although parents or guardians may request services for their children, the local department of social services must voluntarily enter into a voluntary placement agreement to provide those services.

For children placed in an out-of-home-placement, which could extend past 180 days pursuant to a voluntary agreement, DHR would be required to file a petition to continue necessary care and treatment, but may not request custody of the child. This procedure is similar to what is required under current law (DHR must file a petition to continue an out-of-home placement past 180 days for a CINA) and could be accomplished without expenditures beyond those required under current law.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None. However, a substantially similar bill, SB 458 was referred to the Judicial Proceedings Committee. HB 534 is also similar.

**Information Source(s):** Department of Juvenile Justice, Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2003  
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