

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 458

(Senator Jacobs)

Judicial Proceedings

Health and Government Operations

Children with Disabilities - Voluntary Placements

This bill prohibits a local department of social services from seeking legal custody of a child under a voluntary placement agreement with a developmental disability or a mental illness 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 as necessary and if the juvenile court determines that continuation of placement is in the child's best interests. The bill also makes other changes related to these children.

Fiscal Summary

State Effect: The bill changes existing practice but is not expected to result in any additional persons receiving services. As a result, it should not affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The court must hold a voluntary placement hearing within 30 days after a voluntary placement petition is filed. A voluntary placement 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 committed under or continued in a voluntary placement enters an out-of-home placement 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.

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

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, 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

The Department of Human Resources' (DHR) Social Services Administration 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.

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. DHR regulations 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Governor's Office (Individuals with Disabilities), Department of Health and Mental Hygiene, Department of Legislative Services

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