

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 799

(Chairman, Judiciary Committee)

(By Request – Departmental – Human Resources)

Judiciary

Judicial Proceedings

Child in Need of Assistance Proceedings - Permanency Plan Review Hearings

This departmental bill provides that at a hearing to review a child’s permanency plan, the court must determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect.

Fiscal Summary

State Effect: The bill’s requirements could be handled with existing resources. Enactment of the bill may help prevent loss of federal foster care matching funds provided under the Adoption and Safe Families Act.

Local Effect: The bill’s requirements could be met with existing resources.

Small Business Effect: The Department of Human Resources has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: A court must hold a permanency planning hearing to determine the permanency plan for the committed child no later than 11 months after a child in a Child in Need of Assistance proceeding enters an out-of-home placement; or within 30 days after the court finds that reasonable efforts to reunify a child with a parent or guardian are not required based on a finding that abuse, torture, or a crime of violence occurred. A child is considered to be in an out-of-home placement 30 days after a child is placed in an

out-of-home placement. If all parties agree, a permanency plan hearing may be held the same day as the reasonable efforts hearing. On written request of a party or on its own motion, the court may schedule a hearing at an earlier time to determine a permanency plan or review its implementation. The written request must state the reason for the request and each issue to be considered. At least ten days before the permanency planning hearing, the local department must provide all parties and the court with a copy of the department's permanency plan for the child.

At a permanency hearing, the court must determine the child's permanency plan, which may be reunification or other alternatives as set forth in statute. If the child is 16, the court must determine the services needed to help the child make the transition from placement to independent living.

The court may not order a child to be continued in a placement for a certain period, or on a permanent basis, due to the child's special needs or circumstances unless the court finds the agency or person to which the child is committed has documented a compelling reason showing that it would not be in the best interest of the child to return home, be referred for termination of parental rights, or be placed for adoption or guardianship.

If the court determines that the permanency plan should be changed to adoption, the court must order the local department of social services to file a petition for guardianship within 30 days. The department has 60 days to respond if the department does not support the plan and the court must schedule a termination of parental rights hearing instead of the next six month review hearing.

Except as otherwise provided, the court must conduct a hearing to review the permanency plan at least every six months until the commitment is rescinded. The court must conduct a review hearing every 12 months after the court determines that the child must be continued in an out-of-home placement with a specified caregiver. Unless the court finds good cause, a case must be terminated after the court grants custody and guardianship to a child's relative or other individual.

If the court finds good cause not to terminate a case, the court must conduct a review hearing every 12 months until the case is terminated. At the review hearing, the court must:

- determine the continuing necessity for and appropriateness of the commitment;
- determine the extent of compliance with the permanency plan;

- determine the extent of progress made toward alleviating the causes necessitating commitment;
- project a reasonable date to return a child in placement to a home, to a preadoptive home, or under legal guardianship;
- evaluate the safety of the child and take measures to protect the child; and
- change the permanency plan if a change in the permanency plan would be in the child's best interest.

Every reasonable effort must be made to find a permanent placement for a child within 24 months after the date of initial placement. If practicable, the local department of social services must give at least seven days' notice to the child's foster parent, preadoptive parent, or caregiver relative before any permanency plan hearing. The aforementioned people or their attorneys must be given an opportunity to be heard at the hearing. However, they are not necessarily parties to the proceeding solely due to the right to notice and hearing that is provided. At a review hearing, the court shall consider any required written report of a local out-of-home placement review board, as required by statute.

Background: Federal regulations issued under the Adoption and Safe Families Act (ASFA) require states to impose stricter requirements regarding judicial findings and documentation in the court order of reasonable efforts. For a state to claim foster care matching funds for a child in an out-of-home placement, there must be a finding that there have been reasonable efforts to finalize the permanency plan. All findings must be explicit, specific, and made on a case-by-case basis. The Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services recently conducted an eligibility review for federal foster care funding and the ACF found that, in Maryland, while reasonable efforts to finalize the permanency plan were made and presented in court, the court orders of the hearings did not stipulate the effort, as required by the federal government. The bill is intended to conform Maryland law to ASFA requirements regarding documentation of reasonable efforts.

Recently, ACF disallowed \$700,000 in foster care maintenance payments and related administrative costs. The Department of Human Resources (DHR) has appealed the administrative costs portion of the disallowance to the U.S. Department of Health and Human Services.

State Fiscal Effect: Enactment of the bill may help prevent loss of federal foster care matching funds. DHR advises that the amount of federal funding that could be lost is unknown. DHR has submitted a program improvement plan to address the federal concern that court orders regarding permanency plan reviews did not conform to federal requirements. The next review of the Maryland Title IV-E foster care program will be conducted with ACF no later than February 1, 2005.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Legislative Services

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