

SENATE BILL 605

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2004 Regular Session
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CF 4r2225

By: **Senators Garagiola, Brochin, Forehand, Giannetti, Gladden, Grosfeld,
Haines, Hooper, Hughes, Jones, Kelley, Lawlah, McFadden, Ruben, and
Stone**

Introduced and read first time: February 6, 2004
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Causes - Child in Need of Assistance - Court Hearings and Findings**

3 FOR the purpose of authorizing a court, in certain proceedings concerning a child in
4 need of assistance, to direct the local department to provide certain services to a
5 child, child's family, or child's caretaker to the extent provided in the Maryland
6 Constitution and with the purpose of protecting and advancing a child's best
7 interests; requiring a juvenile court in a certain hearing concerning a child in
8 need of assistance to make certain findings on whether reasonable efforts were
9 made by a local department of social services to prevent placement of the child
10 in the department's custody; requiring the court in certain review hearings to
11 make certain findings on whether reasonable efforts were made by a local
12 department to finalize a permanency plan and provide for certain needs of the
13 child; authorizing a court to require a local department to produce certain
14 evidence in a certain hearing; requiring the court to consider certain actions of a
15 local department in making certain findings; requiring a court to make written
16 findings if the court determines reasonable efforts were made but that a local
17 department did not take certain actions; requiring a court that finds reasonable
18 efforts were not made to submit that written finding to certain interested
19 parties; defining a term; and generally relating to children in need of assistance
20 hearings.

21 BY renumbering

22 Article - Courts and Judicial Proceedings
23 Section 3-801(v) through (aa), respectively
24 to be Section 3-801(w) through (bb), respectively
25 Annotated Code of Maryland
26 (2002 Replacement Volume and 2003 Supplement)

27 BY repealing and reenacting, without amendments,

28 Article - Courts and Judicial Proceedings
29 Section 3-801(a), 3-815(a) and (e), 3-817(a), 3-819(a)(1), (b), (c), and (d), and
30 3-823(b)(1), (e), (g), and (h)

1 Annotated Code of Maryland
2 (2002 Replacement Volume and 2003 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Courts and Judicial Proceedings
5 Section 3-802 and 3-815(b) and (d)
6 Annotated Code of Maryland
7 (2002 Replacement Volume and 2003 Supplement)

8 BY adding to
9 Article - Courts and Judicial Proceedings
10 Section 3-801(v) and 3-816.1
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2003 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article - Family Law
15 Section 5-319(b) and (f)
16 Annotated Code of Maryland
17 (1999 Replacement Volume and 2003 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That Section(s) 3-801(v) through (aa), respectively, of Article - Courts
20 and Judicial Proceedings of the Annotated Code of Maryland be renumbered to be
21 Section(s) 3-801(w) through (bb), respectively.

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
23 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 (V) "REASONABLE EFFORTS" MEANS EFFORTS OF SUFFICIENT SCOPE,
28 DURATION, AND QUALITY AS ARE REASONABLY LIKELY TO ADDRESS IDENTIFIED
29 PROBLEMS AND ACHIEVE IDENTIFIED OBJECTIVES.

30 3-802.

31 (a) The purposes of this subtitle are:

32 (1) To provide for the care, protection, safety, and mental and physical
33 development of any child coming within the provisions of this subtitle;

1 (2) To provide for a program of services and treatment consistent with
2 the child's best interests and the promotion of the public interest;

3 (3) To conserve and strengthen the child's family ties and to separate a
4 child from the child's parents only when necessary for the child's welfare;

5 (4) To hold parents of children found to be in need of assistance
6 responsible for remedying the circumstances that required the court's intervention;

7 (5) Except as otherwise provided by law, to hold the local department of
8 social services responsible for providing services to assist the parents with remedying
9 the circumstances that required the court's intervention;

10 (6) If necessary to remove a child from the child's home, to secure for the
11 child custody, care, and discipline as nearly as possible equivalent to that which the
12 child's parents should have given;

13 (7) To achieve a timely, permanent placement for the child consistent
14 with the child's best interests; and

15 (8) To provide judicial procedures for carrying out the provisions of this
16 subtitle.

17 (b) This subtitle shall be construed liberally to effectuate these purposes.

18 (C) (1) IN ALL JUDICIAL PROCEEDINGS CONDUCTED IN ACCORDANCE WITH
19 THIS SUBTITLE, THE COURT MAY DIRECT THE LOCAL DEPARTMENT TO PROVIDE
20 SERVICES TO A CHILD, THE CHILD'S FAMILY, OR THE CHILD'S CAREGIVER TO THE
21 EXTENT PERMITTED UNDER THE MARYLAND CONSTITUTION.

22 (2) THE COURT SHALL EXERCISE THE AUTHORITY DESCRIBED IN
23 PARAGRAPH (1) OF THIS SUBSECTION TO PROTECT AND ADVANCE A CHILD'S BEST
24 INTERESTS.

25 3-815.

26 (a) In accordance with regulations adopted by the Department of Human
27 Resources, a local department may authorize shelter care for a child who may be in
28 need of assistance and has been taken into custody under this subtitle.

29 (b) A local department may place a child in emergency shelter care before a
30 hearing if:

31 (1) Placement is required to protect the child from serious immediate
32 danger;

33 (2) There is no parent, guardian, custodian, or other person able to
34 provide supervision; and

35 (3) (i) 1. The child's continued placement in the child's home is
36 contrary to the welfare of the child; and

1 THE LOCAL DEPARTMENT MADE REASONABLE EFFORTS TO PREVENT PLACEMENT
2 OF THE CHILD INTO THE LOCAL DEPARTMENT'S CUSTODY.

3 (2) IN A REVIEW HEARING CONDUCTED IN ACCORDANCE WITH § 3-823
4 OF THIS SUBTITLE OR § 5-319 OF THE FAMILY LAW ARTICLE, THE COURT SHALL
5 MAKE A FINDING WHETHER A LOCAL DEPARTMENT MADE REASONABLE EFFORTS
6 TO:

7 (I) FINALIZE THE PERMANENCY PLAN IN EFFECT FOR THE CHILD;
8 AND

9 (II) MEET THE NEEDS OF THE CHILD, INCLUDING THE CHILD'S
10 HEALTH, EDUCATION, SAFETY, AND PREPARATION FOR INDEPENDENCE.

11 (3) THE COURT SHALL REQUIRE A LOCAL DEPARTMENT TO PROVIDE
12 EVIDENCE OF ITS EFFORTS BEFORE THE COURT MAKES A FINDING REQUIRED
13 UNDER THIS SUBSECTION.

14 (C) IN MAKING ITS FINDINGS IN ACCORDANCE WITH SUBSECTION (B) OF THIS
15 SECTION, THE COURT SHALL CONSIDER:

16 (1) THE EXTENT TO WHICH A LOCAL DEPARTMENT HAS COMPLIED WITH
17 THE LAW, REGULATIONS, STATE OR FEDERAL COURT ORDERS, OR A STIPULATED
18 AGREEMENT ACCEPTED BY THE COURT REGARDING THE PROVISION OF SERVICES TO
19 A CHILD IN AN OUT-OF-HOME PLACEMENT;

20 (2) WHETHER A LOCAL DEPARTMENT HAS ENSURED THAT:

21 (I) A CASEWORKER IS ACTIVELY RESPONSIBLE FOR THE CASE AT
22 ALL TIMES;

23 (II) THE IDENTITY OF THE CASEWORKER HAS BEEN PROMPTLY
24 COMMUNICATED TO THE COURT AND THE PARTIES; AND

25 (III) THE CASEWORKER IS KNOWLEDGEABLE ABOUT THE CASE AND
26 HAS RECEIVED ALL PERTINENT FILES AND OTHER INFORMATION WITHIN 5
27 WORKING DAYS OF RECEIVING THE ASSIGNMENT FROM THE LOCAL DEPARTMENT;

28 (3) FOR A HEARING UNDER § 3-823 OF THIS SUBTITLE, WHETHER A
29 LOCAL DEPARTMENT HAS PROVIDED APPROPRIATE SERVICES THAT FACILITATE THE
30 ACHIEVEMENT OF A PERMANENCY PLAN FOR THE CHILD;

31 (4) WHETHER THE CHILD'S PLACEMENT HAS BEEN STABLE AND IN THE
32 LEAST RESTRICTIVE SETTING APPROPRIATE FOR THE CHILD DURING THE PERIOD
33 SINCE THE MOST RECENT HEARING HELD BY THE COURT;

34 (5) WHETHER A LOCAL DEPARTMENT NOTIFIED THE COURT AND ALL
35 PARTIES BEFORE ANY CHANGE OF PLACEMENT FOR THE CHILD, OR, IF EMERGENCY
36 CONDITIONS MADE A CHANGE NECESSARY, AS SOON AS POSSIBLE AFTER THE
37 CHANGE OF PLACEMENT;

1 (6) ON RECEIPT OF A REPORT OF MALTREATMENT OF A CHILD
2 OCCURRING WHILE THE CHILD IS IN THE CUSTODY OF A LOCAL DEPARTMENT,
3 WHETHER THE LOCAL DEPARTMENT PROVIDED THE APPROPRIATE PARTIES,
4 INCLUDING THE CHILD'S ATTORNEY, A REPORT OR NOTICE OF A REPORT OF THE
5 SUSPECTED MALTREATMENT OF THE CHILD AND OF THE DISPOSITION OF THE
6 INVESTIGATION WITHIN THE TIME REQUIRED BY REGULATION AND COURT ORDER;
7 AND

8 (7) WHETHER A LOCAL DEPARTMENT HAS PROVIDED APPROPRIATE AND
9 TIMELY SERVICES TO HELP MAINTAIN THE CHILD IN THE CHILD'S EXISTING
10 PLACEMENT, INCLUDING ALL SERVICES AND BENEFITS AVAILABLE IN ACCORDANCE
11 WITH STATE LAW, REGULATIONS, STATE AND FEDERAL COURT ORDERS, STIPULATED
12 AGREEMENTS, OR PROFESSIONAL STANDARDS REGARDING THE PROVISION OF
13 SERVICES TO CHILDREN IN OUT-OF-HOME PLACEMENTS.

14 (D) IN MAKING A FINDING IN ACCORDANCE WITH SUBSECTION (B) OF THIS
15 SECTION, A COURT MAY NOT CONSIDER:

16 (1) A POTENTIAL LOSS OF FEDERAL FUNDING FOR PLACEMENT OF A
17 CHILD THAT MAY RESULT FROM A DETERMINATION THAT REASONABLE EFFORTS
18 WERE NOT MADE; OR

19 (2) THAT BUDGET LIMITATIONS RENDER A SERVICE UNAVAILABLE FOR
20 A CHILD THAT OTHERWISE WOULD BE AVAILABLE.

21 (E) A COURT SHALL MAKE THE FINDINGS REQUIRED UNDER SUBSECTION (B)
22 OF THIS SECTION IN WRITING IF IT FINDS THAT REASONABLE EFFORTS ARE BEING
23 MADE FOR A CHILD, BUT ALSO FINDS THAT AT LEAST ONE OF THE FOLLOWING
24 CONDITIONS EXISTS:

25 (1) A LOCAL DEPARTMENT DID NOT COMPLY WITH LAW, REGULATIONS,
26 COURT ORDERS, OR AGREEMENTS DESCRIBED IN SUBSECTION (C)(1) OF THIS
27 SECTION;

28 (2) A LOCAL DEPARTMENT DID NOT ENSURE CONTINUITY OF CASE
29 WORK AS DESCRIBED IN SUBSECTION (C)(2) OF THIS SECTION;

30 (3) A LOCAL DEPARTMENT DID NOT PROVIDE THE SERVICES DESCRIBED
31 IN SUBSECTION (C)(3) OF THIS SECTION;

32 (4) DURING THE PERIOD SINCE THE MOST RECENT COURT HEARING,
33 THE CHILD HAS NOT BEEN PLACED IN A STABLE PLACEMENT OR IN THE LEAST
34 RESTRICTIVE SETTING APPROPRIATE FOR THE CHILD;

35 (5) A LOCAL DEPARTMENT FAILED TO PROVIDE REPORTS OR NOTICES
36 OF REPORTS IN A TIMELY FASHION AS DESCRIBED IN SUBSECTION (C)(5) OR (6) OF
37 THIS SECTION; OR

38 (6) A LOCAL DEPARTMENT HAS NOT PROVIDED SERVICES DESCRIBED IN
39 SUBSECTION (C)(7) OF THIS SECTION.

1 (F) IF THE COURT FINDS THAT REASONABLE EFFORTS FOR A CHILD WERE
2 NOT MADE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THE COURT
3 PROMPTLY SHALL SEND ITS WRITTEN FINDINGS TO:

4 (1) THE DIRECTOR OF THE LOCAL DEPARTMENT;

5 (2) THE STATE CITIZENS REVIEW BOARD FOR CHILDREN ESTABLISHED
6 UNDER § 5-539 OF THE FAMILY LAW ARTICLE;

7 (3) IF APPLICABLE, THE LOCAL CITIZENS REVIEW PANEL ESTABLISHED
8 UNDER § 5-539.2 OF THE FAMILY LAW ARTICLE; AND

9 (4) ANY INDIVIDUAL OR AGENCY IDENTIFIED BY A LOCAL DEPARTMENT
10 OR THE COURT AS RESPONSIBLE FOR MONITORING THE CARE AND SERVICES
11 PROVIDED TO CHILDREN IN THE LEGAL CUSTODY OR GUARDIANSHIP OF THE LOCAL
12 DEPARTMENT ON A SYSTEMIC BASIS.

13 3-817.

14 (a) After a CINA petition is filed under this subtitle, the court shall hold an
15 adjudicatory hearing.

16 3-819.

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

20 (b) In making a disposition on a CINA petition under this subtitle, the court
21 shall:

22 (1) Find that the child is not in need of assistance and, except as
23 provided in subsection (e) of this section, dismiss the case; or

24 (2) Find that the child is in need of assistance and:

25 (i) Not change the child's custody status; or

26 (ii) Commit the child to the custody of:

27 1. A parent, relative, or other individual on terms the court
28 considers appropriate; or

29 2. A local department, the Department of Health and Mental
30 Hygiene, or both, on terms that the court considers appropriate, including designation
31 of the type of facility where the child is to be placed.

32 (c) In addition to any action under subsection (b)(2) of this section, the court
33 may:

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

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

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

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

12 (d) If guardianship of a child is awarded to the local department under this
13 subtitle, the local department shall notify the parents of the child and their attorneys
14 as soon as practicable of any emergency decision made by the guardian with respect
15 to the child under § 3-801(o) of this subtitle.

16 3-823.

17 (b) (1) The court shall hold a permanency planning hearing to determine the
18 permanency plan for a child:

19 (i) No later than 11 months after a child committed under §
20 3-819.1(b) of this subtitle or continued in a voluntary placement under § 3-819.1(b) of
21 this subtitle enters an out-of-home placement; or

22 (ii) Within 30 days after the court finds that reasonable efforts to
23 reunify a child with the child's parent or guardian are not required based on a finding
24 that a circumstance enumerated in § 3-812 of this subtitle has occurred.

25 (e) At a permanency planning hearing, the court shall:

26 (1) Determine the child's permanency plan, which may be:

27 (i) Reunification with the parent or guardian;

28 (ii) Placement with a relative for:

29 1. Adoption; or

30 2. Custody and guardianship;

31 (iii) Adoption by a nonrelative;

32 (iv) Guardianship by a nonrelative;

33 (v) Continuation in a specified placement on a permanent basis
34 because of the child's special needs or circumstances;

1 (vi) Continuation in placement for a specified period because of the
2 child's special needs or circumstances; or

3 (vii) Independent living; and

4 (2) For a child who has attained the age of 16, determine the services
5 needed to assist the child to make the transition from placement to independent
6 living.

7 (g) In the case of a child for whom the court determines that the plan should
8 be changed to adoption under subsection (e)(1)(iii) of this section, the court shall:

9 (1) Order the local department to file a petition for guardianship in
10 accordance with Title 5, Subtitle 3 of the Family Law Article within 30 days or, if the
11 local department does not support the plan, within 60 days; and

12 (2) Schedule a TPR hearing instead of the next 6-month review hearing.

13 (h) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this
14 paragraph, the court shall conduct a hearing to review the permanency plan at least
15 every 6 months until commitment is rescinded or a voluntary placement is
16 terminated.

17 (ii) The court shall conduct a review hearing every 12 months after
18 the court determines that the child shall be continued in out-of-home placement with
19 a specific caregiver who agrees to care for the child on a permanent basis.

20 (iii) 1. Unless the court finds good cause, a case shall be
21 terminated after the court grants custody and guardianship of the child to a relative
22 or other individual.

23 2. If the court finds good cause not to terminate a case, the
24 court shall conduct a review hearing every 12 months until the case is terminated.

25 (2) At the review hearing, the court shall:

26 (i) Determine the continuing necessity for and appropriateness of
27 the commitment;

28 (ii) Determine and document in its order whether reasonable
29 efforts have been made to finalize the permanency plan that is in effect;

30 (iii) Determine the extent of progress that has been made toward
31 alleviating or mitigating the causes necessitating commitment;

32 (iv) Project a reasonable date by which a child in placement may be
33 returned home, placed in a preadoptive home, or placed under a legal guardianship;

34 (v) Evaluate the safety of the child and take necessary measures to
35 protect the child; and

1 (vi) Change the permanency plan if a change in the permanency
2 plan would be in the child's best interest.

3 (3) Every reasonable effort shall be made to effectuate a permanent
4 placement for the child within 24 months after the date of initial placement.

5 **Article - Family Law**

6 5-319.

7 (b) Except as provided in subsection (g) of this section, a guardian with the
8 right to consent to adoption, including a guardian with the right to consent to
9 adoption who was appointed without the consent of the natural parents, shall file a
10 written report with the court and give notice of the child's status to each natural
11 parent of the child under the guardianship and to the child's court-appointed counsel
12 if:

13 (1) a placement for adoption is not made within 9 months of the decree of
14 guardianship;

15 (2) a placement for adoption is made within 9 months of the decree of
16 guardianship, but there is a disrupted placement, and a new placement is not made
17 within 120 days of the disrupted placement; or

18 (3) a final decree of adoption is not entered within 2 years after
19 placement for adoption.

20 (f) On receipt of the guardian's report under subsection (b) of this section, and
21 every 12 months thereafter, the court:

22 (1) shall hold a hearing to review the progress which has been made
23 toward the child's adoption and to review whether the child's current placement and
24 circumstances are in the child's best interest; and

25 (2) shall then take whatever action the court considers appropriate in
26 the child's best interest.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2004.