

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 605

(Senator Garagiola, *et al.*)

Judicial Proceedings

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

This bill expands the proceedings concerning a Child In Need of Assistance (CINA) at which a court must make findings on whether reasonable efforts were made to: (1) prevent placement of a child into the custody of a local department of social services; or (2) finalize the permanency plan for a child that is in out-of-home placement. A reasonable efforts determination is also required for specified review hearings. The bill requires the court to consider the actions of a local department in making the required findings and enumerates factors that must be considered. A local department must produce evidence of its efforts. The bill also specifies the circumstances under which the court's findings must be in writing.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for the Department of Human Resources (DHR) to provide additional information to the courts ruling on CINA cases. Potential significant increase in general fund expenditures for the Judiciary due to length and complexity of CINA proceedings and investigation of reasonable efforts by DHR.

Local Effect: Potential significant increase in expenditures in the court systems of larger jurisdictions, due to additional length and complexity of CINA proceedings under the bill.

Small Business Effect: None.

Analysis

Bill Summary: This bill establishes that in all CINA proceedings, the court may direct the local department of social services to provide services to a child, the child's family, or the child's caregiver to the extent permitted under the Maryland Constitution. The court's authority must be exercised to protect and advance the child's best interests.

A local department may place a child in emergency shelter care before a hearing if the child's continued placement in the child's home is contrary to the welfare of the child and reasonable efforts have been made, but have been unsuccessful in preventing or eliminating the need for removal from the child's home. A court may continue shelter care beyond emergency shelter care only if the court finds that return of the child to the home is contrary to the child's safety and welfare and reasonable efforts were made, but were unsuccessful in preventing or eliminating the need for removal of the child from the home.

This bill defines "reasonable efforts" to mean efforts of sufficient scope, duration, and quality as are reasonably likely to address identified problems and achieve identified objectives.

This bill expands the proceedings at which the court is required to determine whether reasonable efforts were made to prevent a child's placement into the custody of a local department. In addition to the determination of reasonable efforts that must be made at a shelter care hearing, this bill requires the court to determine whether reasonable efforts were made at a CINA adjudicatory hearing, a CINA disposition hearing (which occurs after an adjudicatory hearing), and during consideration of the permanency plan pursuant to a child's out-of-home placement. A reasonable efforts determination must also be made at a review hearing pursuant to a delay in adoption after a grant of guardianship. The court must require a local department to provide evidence of its efforts before the court can make its determination.

In a review hearing conducted for a child's out-of-home placement or pursuant to a delay in adoption after a grant of guardianship, the bill specifies that the court must make a finding on whether a local department made reasonable efforts to finalize the permanency plan for the child and meet the needs of the child, including the child's health, safety, education, and preparation for independence.

This bill specifies numerous factors that must be considered by a court to make its reasonable efforts findings. These factors relate to: (1) compliance with applicable laws; (2) information regarding the caseworker; (3) the level of appropriate services; (4) stability of the child's placement; (5) appropriate notification before changes in

placement; (6) notification and investigation in the event of a child's maltreatment; and (7) appropriate and timely services to children in out-of-home placements. A court may not consider the potential federal funding loss that could result from a determination that reasonable efforts were not made or that budget limitations make a service unavailable for a child. The court must make its findings in writing if it finds that reasonable efforts are being made, but also that one of certain specified conditions exist that could call into question whether reasonable efforts were, in fact, made.

If a court finds that reasonable efforts for a child were not made as required by the bill, the court must send its written findings to: (1) the local department director; (2) the State Citizen's Review Board; (3) the local citizen's review panel, if applicable; and (4) any individual or agency identified as responsible for monitoring the care and services provided to children in the legal custody or guardianship of the local department.

Current Law: CINA provisions must be construed liberally to effectuate the enumerated purposes relating to the care, protection, safety, and mental and physical health of any child who is subject to being designated CINA.

A local department may authorize shelter care for a child who may be CINA and is in a local department's custody. A local department may place a child in emergency shelter care before a hearing if specified conditions exist, including that reasonable, but unsuccessful efforts have been made to prevent or eliminate the need for removal from the child's home. A court may continue shelter care beyond emergency shelter care only if the court finds that specified conditions exist, including that reasonable, but unsuccessful efforts were made to prevent or eliminate the need for removal from a child's home. If the court continues shelter care due to an alleged emergency, the court must assess whether the absence of efforts to prevent removal were reasonable. If the court finds that the absence of efforts was not reasonable, the court must state so in writing. The court must also make a written determination as to whether reasonable efforts are being made to make it possible to return the child to the child's home, or whether the absence of such efforts is reasonable.

After a CINA petition is filed, a court must hold an adjudicatory hearing. Unless the CINA petition is dismissed, the court must hold a separate disposition hearing after an adjudicatory hearing to determine whether a child is CINA. If the child is CINA, the court can refrain from changing the child's custody status or commit the child to the custody of a parent, relative, or other individual, as appropriate; or commit the child to a local department, the Department of Health and Mental Hygiene, or both, as appropriate, including designation of the type of facility where the child is to be placed. In addition, the court may take other actions relating to custody or guardianship of the child, as specified.

The court must hold a permanency planning hearing for a CINA who is committed or a child in voluntary placement who enters an out-of-home placement within specified time frames. At a permanency planning hearing, the court must determine the child's permanency plan, which may be reunification, or other alternatives, as specified. Except as otherwise provided, a court must conduct a review hearing for a child continued in out-of-home placement within specified time frames and make specific determinations regarding the commitment to out-of-home placement and the adequacy of the permanency plan. Every reasonable effort must be made to effectuate a permanent placement for a child within 24 months after the date of the initial placement.

Except as otherwise provided, a guardian with the right to consent to adoption must file a written report with the court and provide notice of a child's status if an adoption placement does not occur within specified time frames or an adoption placement is made, but is disrupted and a new placement is not made within specified time frames. On receipt of the written report, a court must hold a hearing to review the child's status and take whatever action is deemed appropriate and in the child's best interests.

Background: Currently, local departments of social services must make reasonable efforts in two areas. The local department must make reasonable efforts to prevent a CINA from entering an out-of-home placement. The local department must also make reasonable efforts to finalize a permanency plan for a CINA who has been committed to an out-of-home placement. Federal law mandates the reasonable efforts standard for foster care and out-of-home placements through Title IV-E of the Social Security Act and the Adoption and Safe Families Act of 1997.

According to DHR, in fiscal 2003, Maryland did not lose any federal IV-E funding due to not meeting reasonable efforts to prevent out-of-home placements. However, DHR did lose federal IV-E funding due to a finding that reasonable efforts were not made to finalize permanency plans in cases where the permanency plan included long-term foster care. If a court does determine that reasonable efforts were not made to prevent an out-of-home placement or to finalize a permanency plan, the State loses federal IV-E funding until the court finds that reasonable efforts have been made.

DHR reports that from fiscal 2002 to 2003, the number of approved foster homes declined 11.1% statewide from 4,568 to 4,061 homes. The number of newly approved homes is not currently keeping pace with the number of needed placements.

State Fiscal Effect:

Department of Human Resources: For each instance in which DHR is found not to have made reasonable efforts to either prevent out-of-home placement or to create a viable permanency plan once a child is in the custody of a local department of social services, there is a risk of loss of federal funds. Since the bill requires a determination of reasonable efforts at four initial hearings during a CINA proceeding, the risk of finding that reasonable efforts were not made ostensibly increases. In fiscal 2003, DHR attained \$61,901,820 in federal funds for foster care. For each instance of noncompliance, DHR would lose federal funding for at least six months, until the court determines that DHR has corrected any deficiencies in its processing of CINA children. In fiscal 2003, DHR was found to be noncompliant for about 28% of its cases. Accordingly, DHR would be at risk of losing about 28% of \$61,901,820 that it receives for foster care for six months. This would amount to a loss of about \$8,666,255 in federal funds. DHR advises that in the event federal funds are reduced due to the absence of reasonable efforts, the functions that were financed by federal funds would still continue, and would have to be financed by State general funds.

To meet the requirements of this bill, a minimal increase in general fund expenditures could be required in DHR. DHR already is required to make reasonable efforts at the shelter care hearing stage and the permanency plan stage in CINA proceedings. Although this bill requires additional findings of reasonable efforts, ostensibly DHR is always required under current law to make reasonable efforts to promote the best interests of any child committed to its jurisdiction. The bill's requirements for evidence of reasonable efforts is new, but "evidence" is not defined in the bill. It is possible that the evidence that DHR already gathers to satisfy the "reasonable efforts" standard under current law would be sufficient for the court to make the rulings required under the bill.

Judiciary: A potential significant increase in general fund expenditures could be required for the Judiciary. In fiscal 2003, there were about 4,151 CINA petitions filed and about 11,854 shelter care, adjudication, disposition, and permanency/planning/review hearings combined statewide. The requirements for the court to make additional findings regarding the presence or absence of reasonable efforts and to issue additional written findings in certain proceedings would add to the length and complexity of CINA dispositions. It is likely that new staff to document and complete orders and to disseminate notices would be needed, at least in the larger jurisdictions like Baltimore City, Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

Local Fiscal Effect: Worcester, Kent, and Washington counties report that the bill is not expected to have a fiscal impact. Montgomery County reported that the fiscal impact would depend on the number of CINA children affected by court decisions.

Additional Information

Prior Introductions: None.

Cross File: HB 842 (Delegates Anderson and Vallario) – Judiciary.

Information Source(s): Department of Legislative Services

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