

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

Senate Bill 697 (Chairman, Judicial Proceedings Committee)
 (By Request – Maryland Judicial Conference)

Judicial Proceedings

Permanency for Families and Children Act of 2004

This bill substantively revises provisions for termination of parental rights proceedings, guardianship, and adoption.

Fiscal Summary

State Effect: Potential significant general fund savings in the Judiciary due to more consensual agreements for placement of children and fewer contested cases. Potential significant general fund expenditure increase in the Office of Public Defender (OPD) to represent parents in adoption proceedings. Minimal general fund expenditure increase for additional Department of Human Resources (DHR) panel attorney fees due to adoption proceedings for Child in Need of Assistance (CINA) cases. General fund expenditure increase of \$440,000 in FY 2005 for notification by clerks of the court, paternity test payments, one additional position, and related costs to process information for the DHR web site. Out-years reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	440,000	580,700	588,700	596,900	605,500
Net Effect	(\$440,000)	(\$580,700)	(\$588,700)	(\$596,900)	(\$605,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential significant savings due to fewer contested proceedings and less litigation, and reduced publication costs for petition notices.

Small Business Effect: None.

Analysis

Bill Summary: This bill is intended to separate the statutes regarding termination of parental rights (TPR) and adoption into three discrete areas to clarify the substantive legal distinctions between involuntary termination and voluntary relinquishment of parental rights. The bill includes the legal processes related to a specified procedure to facilitate ease of use. The areas are:

- Department of Social Services (DSS)-related guardianship and adoption proceedings;
- voluntary agency adoptions and guardianship proceedings; and
- independent adoptions.

DSS Guardianship and Adoption Proceedings

General Provisions: The bill clarifies and revises definitions and adds new definitions to reflect current practice. Procedures related to the handling of adoption orders from foreign jurisdictions are clarified. The definition of paternity is expanded to include the results of genetic testing and to reflect the current practice that a man must sign an affidavit of paternity to have his name put on a child's birth certificate. Any hearing held on the issue of paternity must be held prior to a ruling on a petition for guardianship. The requirement for representation by counsel is expanded to include adoption cases. Provisions are added to authorize and make enforceable post-adoption contact agreements that may be set up between birth parents and adoptive parents. The bill specifies the responsibility for payment of genetic testing costs and attorney's fees. Provisions are clarified regarding a party's right to a final order of guardianship and the types of interlocutory appeals that may be taken in a TPR or adoption proceeding.

Guardianship: The bill specifies the elements of a valid guardianship petition and clarifies that a petition for guardianship must be filed prior to a child's eighteenth birthday. The bill clarifies the responsibility for adequate notice of the filing of a petition for guardianship and establishes the 30-day time limit for a parent who has consented to guardianship to revoke his or her consent. The requirements for service of the order to show cause are clarified, including what steps must be taken to search for parents. The bill specifies the language to be included in a publication notice and provides, in the alternative, for publication of adequate notice on the web site of DHR. The web site notice would be posted for 30 days and newspaper publication would be for one day.

The bill codifies the practice in some jurisdictions of granting consent to guardianship conditioned on adoption of a child into a specific family. The procedure for a hearing

when the condition of a conditional consent to guardianship cannot be fulfilled is established. The bill also specifies that there must be a hearing prior to the entry of a guardianship order. The minimum and maximum time limits for ruling on a guardianship petition are specified. The procedures regarding consent to the granting of a guardianship petition are specified. The bill also provides for notice of a grant of consensual guardianship to all relevant parties and provides that the relinquishment of parental rights is designated as voluntary. The bill specifies the factors that must be considered in the event the grant of guardianship is nonconsensual, that is, a TPR proceeding, and provides for the contents of the court's orders. The bill provides for the authority to terminate a CINA case once guardianship has been granted and specifies the responsibilities of the court post-guardianship.

Adoption Without Prior TPR: The bill gives the court specific authority to enter an adoption order for a CINA prior to termination of parental rights. In the event that the parent of a CINA consents to guardianship, the need for a separate TPR proceeding is eliminated. The bill specifies adequate notice and the elements of a valid order to show cause, the factors a court must consider when ruling on an adoption petition prior to TPR, and the time frames for guardianship cases. The bill: (1) specifies the circumstances under which the court may grant adoption prior to TPR; (2) how consent to adoption may be established; and (3) the elements of adequate notice of the final order for adoption. Procedures in the event a proceeding becomes contested are also specified.

Adoption After TPR: The bill specifies the procedures for adoption when a child is CINA, after termination of parental rights. The bill specifies that the guardian must give consent for a child to be adopted, because the guardian may not always be DSS.

Voluntary Agency Adoption and Guardianship Proceedings

The bill alters the revocation period for consensual adoption from 30 to 14 days and specifies that the court has the authority to enforce post-adoption contact agreements. The bill authorizes conditional consent to adoption by the birth parents, which specifies that placement of a child be with a certain adoptive parent. The definition of "father" is expanded to include the person who is the genetic father of a child. The bill also requires that a contested paternity case be settled by the same court hearing the guardianship case and before the guardianship petition is addressed, thus eliminating the need for a separate paternity action. The bill also authorizes guardianship when the birth parent has a disability that renders him or her incapable of effectively participating in a guardianship proceeding.

Independent Adoptions

The bill specifies the requirements for adequate notice to unknown parents or parents who have not been located and reduces the time required for publication of notice of adoption proceedings. The revocation period for consent to an independent adoption is reduced from 30 to 14 days. The bill's provisions also establish a procedure for post-adoption contact between parties that is enforceable by a court.

Current Law: Provisions relating to guardianship and adoption of CINAs, voluntary relinquishment of parental rights, involuntary termination of parental rights, and independent adoptions are contained in Title 5 of the Family Law Article. Notice of proceedings, the content of court orders, and implementation of court orders relating to guardianship and adoption through involuntary TPR, as well as by voluntary relinquishment, are established. Provisions specify determination of paternity, but do not specify determination of paternity by genetic testing. Provisions require legal representation of children for CINA and guardianship proceedings, but do not specifically include adoption cases. Notification of guardianship and adoption proceedings via the Internet, instead of publication in a newspaper, is not authorized. Once guardianship has been granted to a CINA, there is no specific provision requiring notice to all relevant parties including a court, so that CINA proceedings can be terminated. Post-adoption contact agreements are not recognized and are not enforceable by a court. State law does not provide for conditional consent to adoption. The revocation period for consensual adoptions is 30 days.

Background: Maryland's Foster Care Court Improvement Project (FCCIP) is a federal grant-based program that addresses improving the processing of CINA, related TPR, and adoption cases. In 1997, an assessment of the juvenile courts' processing of CINA and related cases was the impetus for a report, *Improving Court Performance for Abused and Neglected Children*. As a result of this report, FCCIP recommended a substantive revision of CINA statutes, which was enacted as Chapter 415 of 2001.

During the revision of the CINA statute, FCCIP determined that the TPR and adoption statutes needed revision also. A recommendation to revise TPR and adoption statutes was approved by Chief Judge Bell of the Maryland Court of Appeals and the federal government. FCCIP, under the purview of the CINA subcommittee and its consultants, began rewriting TPR and adoption statutes in 2000. The CINA subcommittee consists of judges, masters, representatives from DHR, attorneys who represent parents and children, staff from local departments of social services, and representatives from private placement and adoption agencies. The proposed revision of TPR is intended to separate procedures relating to TPR and adoption procedures into discrete areas to provide more

clarity. Provisions also eliminate archaic language, and codify case law and best practices, as identified by various stakeholders.

State Fiscal Effect:

Judiciary

There could be potential significant savings in the cost of litigation related to adoption cases. Provisions for post-adoption contact, conditional consent to adoption and consensual guardianship agreements could help courts determine placement of children more quickly and reduce the frequency of litigation. For illustrative purposes only, based on the average cost of a permanent placement for a child of \$600 per month, and if 100 children achieved placement six months earlier than otherwise would have occurred under current law, the Judiciary could achieve savings of \$360,000 annually.

General fund expenditures could increase by \$4,800 in fiscal 2005, accounting for the bill's October 1, 2004 effective date, for court clerks, rather than the petitioners, to provide notice of TPR petitions. It is assumed that the TPR caseload would be about 1,600 and four notices would be provided for each case. Out-years include annualization and inflation.

Office of Public Defender

There could be a potentially significant increase in general fund expenditures to reflect the cost of expanded representation for indigent parents as required by the bill.

Under current law, OPD is required to represent indigent parents for TPR, guardianship proceedings, and any appeals. Under this bill, OPD would be required to provide representation in adoption cases for parents. Generally, once parental rights have been terminated, there are no parents with standing to participate in adoption case hearings. However, the bill provides for adoptions prior to the termination of parental rights. Under this new cause of action, parents could conceivably retain standing during an adoption process. Since an adoption could take place prior to an official termination of parental rights, then OPD would be required to represent indigent parents until a final adoption order is issued by the court.

It is unclear how many cases could be generated under these provisions. The Judiciary advises that in federal fiscal 2002, there were 770 adoptions statewide and estimates that 2% to 3% of these cases involved adoptions before termination of parental rights. It is possible that more cases could be generated because any adult would be able to petition for an adoption proceeding. Under this type of proceeding, parents could also decide to contest an adoption creating the potential for longer, more complex cases. Additional

cases resulting from the bill's provisions could create additional expenditures and the need for more personnel.

Department of Human Resources

General fund expenditures could increase by \$435,184 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. The estimate reflects payment for paternity tests and the cost of hiring one administrative assistant, with related one-time equipment costs, and the creation of brochures and flyers to announce the web site required by the bill. The administrative assistant would be needed to manage the information regarding TPR and guardianship notifications that would be provided by the 24 local departments of social services. This position would also be responsible for coordinating submissions for DHR information management staff. Creation and maintenance of the web site required by the bill could be accomplished with existing resources.

The bill requires local departments of social services to pay for any paternity tests ordered by the Juvenile Court, unless a claimant is able to pay for a test. In fiscal 2003, 3,000 children were subject to out-of-home placement. Paternity tests are typically required by the court in these proceedings. This estimate assumes that half of the claimants would be able to pay. Generally, two tests are required for each claimant and the average cost of a paternity test is \$175:

Salaries and Fringe Benefits	\$30,577
Paternity Test Payments	393,750
Brochures and Flyers	5,100
Other Operating Expenses	<u>5,757</u>
Total FY 2005 DHR Expenditures	\$435,184

Future year expenditures reflect: (1) full salaries with a 4.6% annual increases and 3% annual turnover; and (2) 1% annual increases in ongoing operating expenses.

It is also possible that general fund expenditures could increase minimally to continue representation of CINAs in adoption cases. While the courts and attorneys representing CINAs would try to ensure that proceedings regarding a child are held as closely together as possible, the addition of adoption proceedings to the representation duties of DHR panel attorneys could result in longer cases. While DHR pays panel attorneys a set fee annually for CINA representation no matter how many hearings occur within that year, the addition of adoption cases increases the likelihood that a CINA proceeding could be

continued into the following year, necessitating the payment of additional attorneys fees by DHR. The overall impact, however, is expected to be minimal.

Local Fiscal Effect: This bill could result in a reduced number of contested TPR and guardianship hearings and less litigation. In the estimated small number of cases where a consensual guardianship agreement could be reached, the cost of publication would be eliminated. In addition, the option of publishing TPR and guardianship petitions on the DHR web site instead of in a newspaper could reduce costs to local governments. It is estimated that a one-day notice regarding these proceedings published in an urban area newspaper could cost \$1,000 per day.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 183/SB 266 of the 2003 session. HB 183 was referred to the Judiciary Committee. SB 266 was referred to the Judicial Proceedings Committee. Both bills were withdrawn before hearings were held.

Cross File: HB 882 (Chairman, Judiciary Committee) (By Request – Maryland Judicial Conference) – Judiciary.

Information Source(s): Department of Legislative Services

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