
By: **Delegates Weldon, Bobo, Marriott, McKee, Nathan-Pulliam, and Shank**

Introduced and read first time: February 10, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Children - De Facto Custody and Task Force on Kinship**
3 **Caregivers**

4 FOR the purpose of authorizing the disclosure of child abuse and neglect reports and
5 records to a court in which a petition for child custody is filed by a certain
6 relative; requiring a local department to provide to a court under certain
7 circumstances the results of a certain child abuse and neglect clearance;
8 establishing certain penalties if certain employees or officials of a local
9 department or the Department of Human Resources release certain information
10 in violation of this Act; establishing that this Act provides the only procedures
11 for a certain relative to be granted custody of a child; authorizing a certain
12 relative to petition for custody of a child under certain circumstances; requiring
13 a certain relative and a certain individual to apply for a criminal history records
14 check and a certain child abuse and neglect clearance under certain
15 circumstances; requiring a court to consider certain factors in making a certain
16 determination; requiring a court to hold a hearing on a petition for custody filed
17 by a certain relative; requiring a court to send notice to the parents of a child
18 concerning a certain petition and the setting of a hearing in a certain manner;
19 requiring the court to consider certain factors in determining custody of the
20 child; prohibiting the court from considering a certain factor in determining
21 custody of the child; requiring the court to issue a certain written order;
22 establishing a Task Force on Kinship Caregivers; establishing the membership
23 of the Task Force; providing staff support for the Task Force; prohibiting a
24 member of the Task Force from receiving certain compensation; authorizing a
25 member of the Task Force to be reimbursed for certain expenses; providing for
26 the duties of the Task Force; requiring the Task Force to issue its findings and
27 recommendations by a certain date; providing for the termination of the Task
28 Force; defining certain terms; providing for the application of this Act; and
29 generally relating to child custody proceedings.

30 BY repealing and reenacting, with amendments,
31 Article 88A - Department of Human Resources
32 Section 6(b)(2)(viii) and (ix)
33 Annotated Code of Maryland
34 (2003 Replacement Volume and 2004 Supplement)

1 BY adding to
2 Article 88A - Department of Human Resources
3 Section 6(b)(2)(x)
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2004 Supplement)

6 BY repealing and reenacting, without amendments,
7 Article - Family Law
8 Section 1-201(a)(5) and (b)(4)
9 Annotated Code of Maryland
10 (2004 Replacement Volume)

11 BY repealing and reenacting, with amendments,
12 Article - Family Law
13 Section 5-561(c) and 5-714(f)
14 Annotated Code of Maryland
15 (2004 Replacement Volume)

16 BY adding to
17 Article - Family Law
18 Section 9-501 through 9-503, inclusive, to be under the new subtitle "Subtitle 5.
19 Custody Granted to a De Facto Custodian"
20 Annotated Code of Maryland
21 (2004 Replacement Volume)

22 Preamble

23 WHEREAS, 4.5 million children in the United States live in
24 grandparent-headed households, a 30% increase from 1990 to 2000, and an
25 additional 1.5 million children live in households headed by other relatives; and
26 WHEREAS, In Maryland, 129,000 children are being cared for by 52,000
27 grandparents and other relative caregivers instead of being processed through the
28 State's foster care system; and
29 WHEREAS, An increasing number of parents are unable to raise their own
30 children because of substance abuse, incarceration, illnesses such as HIV/AIDS, child
31 abuse or neglect, domestic or community violence, unemployment, poverty, and other
32 serious community crises; and
33 WHEREAS, Grandparents and other relatives stabilize the situation for these
34 children by providing safe and loving homes and keeping thousands of children from
35 unnecessarily entering the foster care system; and

1 WHEREAS, Children feel secure living in an environment with grandparents
2 and relatives who are people they know, who give them a sense of belonging, and who
3 are able to provide them with extended family as additional support; and

4 WHEREAS, It is in the State's interest to recognize, in law, the importance of
5 grandparents and other relatives who seek custody of children whose parents cannot
6 adequately care for them; now, therefore,

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article 88A - Department of Human Resources**

10 6.

11 (b) Except as otherwise provided in Title 5, Subtitle 7 of the Family Law
12 Article, § 6A of this subtitle, and this section, all records and reports concerning child
13 abuse or neglect are confidential, and their unauthorized disclosure is a criminal
14 offense subject to the penalty set out in subsection (e) of this section. Reports or
15 records concerning child abuse or neglect:

16 (2) May be disclosed on request:

17 (viii) To the director of a licensed child care facility or licensed child
18 placement agency for the purpose of carrying out appropriate personnel actions
19 following a report of suspected child neglect or abuse alleged to have been committed
20 by an employee of the facility or agency and involving a child who is currently or who
21 was previously under that facility's or agency's care; [or]

22 (ix) To the Office of the Independent Juvenile Justice Monitor
23 established under Article 49D of the Code; OR

24 (X) TO THE APPROPRIATE COURT IN WHICH A PETITION FOR
25 CUSTODY HAS BEEN FILED UNDER § 9-503 OF THE FAMILY LAW ARTICLE.

26 **Article - Family Law**

27 1-201.

28 (a) An equity court has jurisdiction over:

29 (5) custody or guardianship of a child except for a child who is under the
30 jurisdiction of any juvenile court and who previously has been adjudicated to be a
31 child in need of assistance;

32 (b) In exercising its jurisdiction over the custody, guardianship, visitation, or
33 support of a child, an equity court may:

34 (4) from time to time, set aside or modify its decree or order concerning
35 the child; or

1 5-561.

2 (c) The following individuals shall obtain a criminal history records check
3 under this Part VI of this subtitle:

4 (1) an individual who is seeking to adopt a child through a local
5 department of social services or licensed child placement agency;

6 (2) an adult relative with whom a child, committed to a local department
7 of social services, is placed by the local department of social services;

8 (3) any adult known by a local department of social services to be
9 residing in a:

10 (i) family day care home required to be registered under Title 5 of
11 this article;

12 (ii) home of an adult relative of a child with whom the child,
13 committed to a local department of social services, is placed by the local department of
14 social services;

15 (iii) foster care home or child care home required to be approved
16 under Title 5 of this article; or

17 (iv) home of an individual seeking to adopt a child through a local
18 department of social services or a licensed child placement agency; [and]

19 (4) if requested by a local department of social services:

20 (i) a parent or guardian of a child who is committed to the local
21 department and is or has been placed in an out-of-home placement within the past
22 year; and

23 (ii) any adult known by the local department to be residing in the
24 home of the parent or guardian; AND

25 (5) A RELATIVE WHO FILES A PETITION FOR CUSTODY OF A CHILD
26 UNDER § 9-503 OF THIS ARTICLE AND ANY ADULT RESIDING IN THE HOME OF THE
27 RELATIVE.

28 5-714.

29 (f) (1) Except for information entered in accordance with subsection (e) of
30 this section, information in a central registry may not be used as a sole basis for
31 responding to any request for background information for employment or voluntary
32 service.

33 (2) IN RESPONSE TO A NOTARIZED REQUEST FROM A RELATIVE WHO
34 FILES A PETITION FOR CUSTODY OF A CHILD UNDER § 9-503 OF THIS ARTICLE OR AN
35 ADULT RESIDING IN THE HOME OF THE RELATIVE, A LOCAL DEPARTMENT SHALL
36 PROVIDE TO THE COURT IN WHICH THE PETITION HAS BEEN FILED THE RESULTS OF

1 (3) THE COURT SHALL CONSIDER THE RESULTS OF THE CRIMINAL
2 HISTORY RECORDS CHECK AND THE CHILD ABUSE AND NEGLECT CLEARANCE FOR
3 THE PETITIONER AND EACH ADULT RESIDING IN THE HOME OF THE PETITIONER IN
4 MAKING ITS DETERMINATION UNDER SUBSECTION (C) OF THIS SECTION.

5 (B) (1) THE COURT SHALL HOLD A HEARING ON THE PETITION FILED
6 UNDER SUBSECTION (A) OF THIS SECTION.

7 (2) IN ACCORDANCE WITH THE MARYLAND RULES, THE COURT SHALL
8 SEND NOTICE OF THE FILING OF THE PETITION UNDER SUBSECTION (A) OF THIS
9 SECTION AND THE SETTING OF THE HEARING UNDER PARAGRAPH (1) OF THIS
10 SUBSECTION TO EACH PARENT OF THE CHILD.

11 (C) A COURT MAY GRANT THE PETITIONER CUSTODY OF THE CHILD IF THE
12 COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT:

13 (1) THE PETITIONER IS THE DE FACTO CUSTODIAN OF THE CHILD; AND

14 (2) IT IS IN THE BEST INTEREST OF THE CHILD THAT THE PETITIONER
15 BE GRANTED CUSTODY OF THE CHILD BECAUSE:

16 (I) THE CHILD'S PARENT IS UNFIT TO HAVE CUSTODY; OR

17 (II) THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT MAKE
18 CUSTODY BY THE PARENT DETRIMENTAL TO THE BEST INTEREST OF THE CHILD.

19 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IN
20 DETERMINING WHETHER THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT MAKE
21 CUSTODY BY THE PARENT DETRIMENTAL TO THE CHILD, THE COURT SHALL
22 CONSIDER THE FOLLOWING FACTORS:

23 (I) IF THE COURT CONSIDERS THE CHILD OF SUFFICIENT AGE TO
24 EXPRESS A PREFERENCE, THE WISHES OF THE CHILD AS TO THE CHILD'S
25 CUSTODIAN;

26 (II) THE DESIRABILITY OF MAINTAINING FAMILY RELATIONSHIPS
27 WITH THE CHILD AND CONTINUITY OF THE FAMILY UNIT IN THE DE FACTO
28 CUSTODIAN'S HOME;

29 (III) THE STABILITY AND CERTAINTY OF THE CHILD'S FUTURE WITH
30 THE PARENT;

31 (IV) THE NATURE AND STRENGTH OF THE TIES BETWEEN THE
32 CHILD AND THE DE FACTO CUSTODIAN;

33 (V) THE INTENSITY AND GENUINENESS OF THE PARENT'S DESIRE
34 TO HAVE CUSTODY OF THE CHILD;

35 (VI) THE MENTAL AND PHYSICAL HEALTH OF ALL PARTIES
36 INVOLVED;

1 (VII) THE INTENT OF THE PARENT IN PLACING THE CHILD WITH THE
2 DE FACTO CUSTODIAN;

3 (VIII) THE AMOUNT OF MEANINGFUL CONTACT THE PARENT HAD
4 WITH THE CHILD DURING THE TIME THE DE FACTO CUSTODIAN HAD CUSTODY OF
5 THE CHILD;

6 (IX) THE LENGTH OF TIME THE CHILD WAS AWAY FROM THE
7 PARENT;

8 (X) THE AGE OF THE CHILD WHEN CARE WAS ASSUMED BY THE DE
9 FACTO CUSTODIAN;

10 (XI) THE PERIOD OF TIME THAT ELAPSED BEFORE THE PARENT
11 SOUGHT TO RECLAIM THE CHILD;

12 (XII) THE POSSIBLE EMOTIONAL EFFECT ON THE CHILD OF A
13 CHANGE OF CUSTODY;

14 (XIII) THE FACTS AND CIRCUMSTANCES OF THE PARENT'S ABSENCE,
15 INCLUDING WHETHER:

16 1. THE CHILD WAS PLACED OR ALLOWED TO REMAIN IN THE
17 RESIDENCE OF THE DE FACTO CUSTODIAN BECAUSE THE PARENT SEEKING
18 CUSTODY PLACED THE CHILD WITH THE DE FACTO CUSTODIAN TO SEEK
19 EMPLOYMENT, WORK, OR ATTEND SCHOOL; OR

20 2. THE PARENT SEEKING CUSTODY PREVIOUSLY WAS
21 PREVENTED FROM DOING SO BECAUSE OF DOMESTIC VIOLENCE;

22 (XIV) THE INTERACTION AND INTERRELATIONSHIP OF THE CHILD
23 WITH THE PARENT, THE CHILD'S SIBLINGS, AND ANY OTHER PERSON WHO MAY
24 SIGNIFICANTLY AFFECT THE CHILD'S BEST INTERESTS; AND

25 (XV) INFORMATION, RECORDS, AND EVIDENCE OF DOMESTIC
26 VIOLENCE.

27 (2) IN MAKING ITS DETERMINATION UNDER SUBSECTION (C) OF THIS
28 SECTION, THE COURT MAY NOT CONSIDER THE ABANDONMENT OF THE FAMILY
29 RESIDENCE BY A PARENT IF THE PARENT WAS PHYSICALLY HARMED OR SERIOUSLY
30 THREATENED WITH PHYSICAL HARM BY THE PARENT'S SPOUSE AND THAT HARM OR
31 THREAT OF HARM CAUSED THE PARENT TO ABANDON THE FAMILY RESIDENCE.

32 (E) IN EACH CASE UNDER THIS SUBTITLE, THE COURT SHALL ISSUE A
33 WRITTEN ORDER EXPLAINING THE REASONS FOR THE COURT'S DECISION.

34 SECTION 2. AND BE IT FURTHER ENACTED, That:

35 (a) There is a Task Force on Kinship Caregivers.

36 (b) The Task Force consists of the following members:

- 1 (1) one member of the Senate, appointed by the President of the Senate;
 - 2 (2) one member of the House of Delegates, appointed by the Speaker of
3 the House;
 - 4 (3) the Attorney General, or the Attorney General's designee;
 - 5 (4) the Secretary of Health and Mental Hygiene, or the Secretary's
6 designee;
 - 7 (5) the Secretary of Human Resources, or the Secretary's designee;
 - 8 (6) the Secretary of Juvenile Services, or the Secretary's designee;
 - 9 (7) the Special Secretary for Children, Youth, and Families, or the
10 Special Secretary's designee;
 - 11 (8) one representative from the Maryland Association of Counties;
 - 12 (9) one representative from the Maryland Municipal League;
 - 13 (10) one representative from Generations United;
 - 14 (11) one representative from the Children's Defense Fund;
 - 15 (12) one representative from AARP Grandparent Information Center;
 - 16 (13) one representative from Solutions for Children and Caregivers, Inc.;
 - 17 (14) one representative from the National Committee of Grandparents for
18 Children's Rights; and
 - 19 (15) two kinship caregivers, to be appointed by the Governor.
- 20 (c) The Governor shall designate the chair of the Task Force.
- 21 (d) The Office of Children, Youth, and Families shall provide staff support to
22 the Task Force.
- 23 (e) A member of the Task Force may not receive compensation for serving on
24 the Task Force, but is entitled to reimbursement for expenses under the Standard
25 State Travel Regulations, as provided in the State budget.
- 26 (f) The Task Force shall:
- 27 (1) assess the current kinship care system in the State;
 - 28 (2) examine the historical record of hurdles and obstacles that kinship
29 caregivers have faced when acquiring legal custody of children;

1 (3) study the legal challenges pertaining to the custody or adoption of
2 children in kinship care, such as:

3 (i) improving the system that transfers custody to kinship
4 relatives;

5 (ii) facilitating the prompt resolution of custody issues; and

6 (iii) moving these custody cases through the court system so the
7 cases do not linger without resolution;

8 (4) compare the State's statistics for placing children in permanent
9 placements with relative caregivers with other states' statistics and with the national
10 average which is significantly higher than the State's average; and

11 (5) make recommendations on the feasibility of instituting a program
12 similar to a Kinship Navigator Program as outlined in federal legislation that would
13 address the challenges faced by grandparent and other relative caregivers and help
14 them obtain federal and state assistance regarding their kinship care role.

15 (g) The Task Force shall report its findings and recommendations to the
16 Governor and, in accordance with § 2-1246 of the State Government Article, the
17 General Assembly, on or before December 31, 2006.

18 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 shall remain in
19 effect for 1 year and 4 months and, at the end of January 31, 2007, with no further
20 action required by the General Assembly, Section 2 of this Act shall be abrogated and
21 of no further force and effect.

22 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall apply only
23 to cases filed on or after the effective date of this Act.

24 SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Section 3 of
25 this Act, this Act shall take effect October 1, 2005.