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

Introduced and read first time: February 10, 2005

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2005

CHAPTER _____

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~~

1 generally relating to ~~child-custody proceedings~~ a Task Force on Kinship
 2 Caregivers.

3 ~~BY repealing and reenacting, with amendments,~~
 4 ~~Article 88A—Department of Human Resources~~
 5 ~~Section 6(b)(2)(viii) and (ix)~~
 6 ~~Annotated Code of Maryland~~
 7 ~~(2003 Replacement Volume and 2004 Supplement)~~

8 ~~BY adding to~~
 9 ~~Article 88A—Department of Human Resources~~
 10 ~~Section 6(b)(2)(x)~~
 11 ~~Annotated Code of Maryland~~
 12 ~~(2003 Replacement Volume and 2004 Supplement)~~

13 ~~BY repealing and reenacting, without amendments,~~
 14 ~~Article—Family Law~~
 15 ~~Section 1-201(a)(5) and (b)(4)~~
 16 ~~Annotated Code of Maryland~~
 17 ~~(2004 Replacement Volume)~~

18 ~~BY repealing and reenacting, with amendments,~~
 19 ~~Article—Family Law~~
 20 ~~Section 5-561(e) and 5-714(f)~~
 21 ~~Annotated Code of Maryland~~
 22 ~~(2004 Replacement Volume)~~

23 ~~BY adding to~~
 24 ~~Article—Family Law~~
 25 ~~Section 9-501 through 9-503, inclusive, to be under the new subtitle "Subtitle 5.~~
 26 ~~Custody Granted to a De Facto Custodian"~~
 27 ~~Annotated Code of Maryland~~
 28 ~~(2004 Replacement Volume)~~

29 **Preamble**

30 **WHEREAS, 4.5 million children in the United States live in**
 31 **grandparent-headed households, a 30% increase from 1990 to 2000, and an**
 32 **additional 1.5 million children live in households headed by other relatives; and**
 33 **WHEREAS, In Maryland, 129,000 children are being cared for by 52,000**
 34 **grandparents and other relative caregivers instead of being processed through the**
 35 **State's foster care system; and**

1 WHEREAS, An increasing number of parents are unable to raise their own
 2 children because of substance abuse, incarceration, illnesses such as HIV/AIDS, child
 3 abuse or neglect, domestic or community violence, unemployment, poverty, and other
 4 serious community crises; and

5 WHEREAS, Grandparents and other relatives stabilize the situation for these
 6 children by providing safe and loving homes and keeping thousands of children from
 7 unnecessarily entering the foster care system; and

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

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

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

16 **Article 88A—Department of Human Resources**

17 ~~6.~~

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

23 (2) May be disclosed on request:

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

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

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

33 **Article—Family Law**

34 ~~1-201.~~

35 (a) An equity court has jurisdiction over:

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

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

6 (4) ~~from time to time, set aside or modify its decree or order concerning~~
7 ~~the child; or~~

8 ~~5-561.~~

9 (e) The following individuals shall obtain a criminal history records check
10 under this Part VI of this subtitle:

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

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

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

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

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

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

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

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

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

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

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

1 ~~5-714.~~

2 (f) (1) ~~Except for information entered in accordance with subsection (c) of~~
 3 ~~this section, information in a central registry may not be used as a sole basis for~~
 4 ~~responding to any request for background information for employment or voluntary~~
 5 ~~service.~~

6 (2) ~~IN RESPONSE TO A NOTARIZED REQUEST FROM A RELATIVE WHO~~
 7 ~~FILES A PETITION FOR CUSTODY OF A CHILD UNDER § 9-503 OF THIS ARTICLE OR AN~~
 8 ~~ADULT RESIDING IN THE HOME OF THE RELATIVE, A LOCAL DEPARTMENT SHALL~~
 9 ~~PROVIDE TO THE COURT IN WHICH THE PETITION HAS BEEN FILED THE RESULTS OF~~
 10 ~~A CHILD ABUSE AND NEGLECT CLEARANCE REQUIRED UNDER § 9-503 OF THIS~~
 11 ~~ARTICLE.~~

12 [(2)] (3) ~~An official or employee of the Department or a local department~~
 13 ~~who releases information from a central registry in violation of paragraph (1) OR (2) of~~
 14 ~~this subsection is subject to the penalty provided in Article 88A, § 6(e) of the Code.~~

15 ~~SUBTITLE 5. CUSTODY GRANTED TO A DE FACTO CUSTODIAN.~~

16 ~~9-501.~~

17 (A) ~~IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
 18 ~~INDICATED.~~

19 (B) ~~"DE FACTO CUSTODIAN" MEANS A RELATIVE WHO HAS PROVIDED~~
 20 ~~FINANCIAL SUPPORT AND BEEN THE PRIMARY CARETAKER OF A CHILD.~~

21 (C) ~~"RELATIVE" MEANS AN ADULT RELATED TO THE CHILD BY BLOOD WITHIN~~
 22 ~~THE FIFTH DEGREE OF CONSANGUINITY.~~

23 ~~9-502.~~

24 ~~A DE FACTO CUSTODIAN MAY ONLY BE GRANTED CUSTODY OF A CHILD IN~~
 25 ~~ACCORDANCE WITH THIS SUBTITLE.~~

26 ~~9-503.~~

27 (A) (1) ~~A RELATIVE SEEKING CUSTODY OF A CHILD UNDER THIS SUBTITLE~~
 28 ~~SHALL FILE A PETITION IN EQUITY COURT THAT STATES:~~

29 (I) ~~THE RELATIVE IS THE DE FACTO CUSTODIAN OF THE CHILD;~~
 30 ~~AND~~

31 (II) ~~IT IS IN THE BEST INTEREST OF THE CHILD THAT THE~~
 32 ~~PETITIONER BE GRANTED CUSTODY OF THE CHILD BECAUSE:~~

33 1. ~~THE CHILD'S PARENT IS UNFIT TO HAVE CUSTODY; OR~~

1 ~~2. THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT MAKE~~
2 ~~CUSTODY BY THE PARENT DETRIMENTAL TO THE BEST INTEREST OF THE CHILD.~~

3 ~~(2) AS PART OF THE PETITION FILED UNDER PARAGRAPH (1) OF THIS~~
4 ~~SUBSECTION, THE PETITIONER AND EACH ADULT RESIDING IN THE HOME OF THE~~
5 ~~PETITIONER SHALL APPLY FOR:~~

6 ~~(I) A CRIMINAL HISTORY RECORDS CHECK UNDER § 5-561 OF THIS~~
7 ~~ARTICLE; AND~~

8 ~~(II) A CLEARANCE THROUGH THE CENTRAL REGISTRY FOR CHILD~~
9 ~~ABUSE AND NEGLECT MAINTAINED BY THE DEPARTMENT OF HUMAN RESOURCES~~
10 ~~UNDER TITLE 7, SUBTITLE 5 OF THIS ARTICLE.~~

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

15 ~~(B) (1) THE COURT SHALL HOLD A HEARING ON THE PETITION FILED~~
16 ~~UNDER SUBSECTION (A) OF THIS SECTION.~~

17 ~~(2) IN ACCORDANCE WITH THE MARYLAND RULES, THE COURT SHALL~~
18 ~~SEND NOTICE OF THE FILING OF THE PETITION UNDER SUBSECTION (A) OF THIS~~
19 ~~SECTION AND THE SETTING OF THE HEARING UNDER PARAGRAPH (1) OF THIS~~
20 ~~SUBSECTION TO EACH PARENT OF THE CHILD.~~

21 ~~(C) A COURT MAY GRANT THE PETITIONER CUSTODY OF THE CHILD IF THE~~
22 ~~COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT:~~

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

24 ~~(2) IT IS IN THE BEST INTEREST OF THE CHILD THAT THE PETITIONER~~
25 ~~BE GRANTED CUSTODY OF THE CHILD BECAUSE:~~

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

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

29 ~~(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IN~~
30 ~~DETERMINING WHETHER THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT MAKE~~
31 ~~CUSTODY BY THE PARENT DETRIMENTAL TO THE CHILD, THE COURT SHALL~~
32 ~~CONSIDER THE FOLLOWING FACTORS:~~

33 ~~(I) IF THE COURT CONSIDERS THE CHILD OF SUFFICIENT AGE TO~~
34 ~~EXPRESS A PREFERENCE, THE WISHES OF THE CHILD AS TO THE CHILD'S~~
35 ~~CUSTODIAN;~~

1 (II) ~~THE DESIRABILITY OF MAINTAINING FAMILY RELATIONSHIPS~~
2 ~~WITH THE CHILD AND CONTINUITY OF THE FAMILY UNIT IN THE DE FACTO~~
3 ~~CUSTODIAN'S HOME;~~

4 (III) ~~THE STABILITY AND CERTAINTY OF THE CHILD'S FUTURE WITH~~
5 ~~THE PARENT;~~

6 (IV) ~~THE NATURE AND STRENGTH OF THE TIES BETWEEN THE~~
7 ~~CHILD AND THE DE FACTO CUSTODIAN;~~

8 (V) ~~THE INTENSITY AND GENUINENESS OF THE PARENT'S DESIRE~~
9 ~~TO HAVE CUSTODY OF THE CHILD;~~

10 (VI) ~~THE MENTAL AND PHYSICAL HEALTH OF ALL PARTIES~~
11 ~~INVOLVED;~~

12 (VII) ~~THE INTENT OF THE PARENT IN PLACING THE CHILD WITH THE~~
13 ~~DE FACTO CUSTODIAN;~~

14 (VIII) ~~THE AMOUNT OF MEANINGFUL CONTACT THE PARENT HAD~~
15 ~~WITH THE CHILD DURING THE TIME THE DE FACTO CUSTODIAN HAD CUSTODY OF~~
16 ~~THE CHILD;~~

17 (IX) ~~THE LENGTH OF TIME THE CHILD WAS AWAY FROM THE~~
18 ~~PARENT;~~

19 (X) ~~THE AGE OF THE CHILD WHEN CARE WAS ASSUMED BY THE DE~~
20 ~~FACTO CUSTODIAN;~~

21 (XI) ~~THE PERIOD OF TIME THAT ELAPSED BEFORE THE PARENT~~
22 ~~SOUGHT TO RECLAIM THE CHILD;~~

23 (XII) ~~THE POSSIBLE EMOTIONAL EFFECT ON THE CHILD OF A~~
24 ~~CHANGE OF CUSTODY;~~

25 (XIII) ~~THE FACTS AND CIRCUMSTANCES OF THE PARENT'S ABSENCE,~~
26 ~~INCLUDING WHETHER:~~

27 1. ~~THE CHILD WAS PLACED OR ALLOWED TO REMAIN IN THE~~
28 ~~RESIDENCE OF THE DE FACTO CUSTODIAN BECAUSE THE PARENT SEEKING~~
29 ~~CUSTODY PLACED THE CHILD WITH THE DE FACTO CUSTODIAN TO SEEK~~
30 ~~EMPLOYMENT, WORK, OR ATTEND SCHOOL; OR~~

31 2. ~~THE PARENT SEEKING CUSTODY PREVIOUSLY WAS~~
32 ~~PREVENTED FROM DOING SO BECAUSE OF DOMESTIC VIOLENCE;~~

33 (XIV) ~~THE INTERACTION AND INTERRELATIONSHIP OF THE CHILD~~
34 ~~WITH THE PARENT, THE CHILD'S SIBLINGS, AND ANY OTHER PERSON WHO MAY~~
35 ~~SIGNIFICANTLY AFFECT THE CHILD'S BEST INTERESTS; AND~~

1 ~~(XV) INFORMATION, RECORDS, AND EVIDENCE OF DOMESTIC~~
 2 ~~VIOLENCE.~~

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

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

10 SECTION ~~2.~~ 1. AND BE IT FURTHER ENACTED, That:

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

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

13 (1) one member of the Senate, appointed by the President of the Senate;

14 (2) one member of the House of Delegates, appointed by the Speaker of
 15 the House;

16 (3) the Attorney General, or the Attorney General's designee;

17 (4) the Secretary of Health and Mental Hygiene, or the Secretary's
 18 designee;

19 (5) the Secretary of Human Resources, or the Secretary's designee;

20 (6) the Secretary of Juvenile Services, or the Secretary's designee;

21 (7) the Special Secretary for Children, Youth, and Families, or the
 22 ~~Special Secretary's~~ Governor's designee;

23 (8) one representative from the Maryland Association of Counties;

24 (9) one representative from the Maryland Municipal League;

25 (10) one representative from Generations United;

26 (11) one representative from the Children's Defense Fund;

27 (12) one representative from AARP Grandparent Information Center;

28 (13) one representative from Solutions for Children and Caregivers, Inc.;

29 (14) one representative from the National Committee of Grandparents for
 30 Children's Rights; and

31 (15) two kinship caregivers, to be appointed by the Governor.

1 (c) The Governor shall designate the chair of the Task Force.

2 (d) The ~~Office of Children, Youth, and Families~~ Department of Human
3 Resources shall provide staff support to the Task Force.

4 (e) A member of the Task Force may not receive compensation for serving on
5 the Task Force, but is entitled to reimbursement for expenses under the Standard
6 State Travel Regulations, as provided in the State budget.

7 (f) The Task Force shall:

8 (1) assess the current kinship care system in the State;

9 (2) examine the historical record of hurdles and obstacles that kinship
10 caregivers have faced when acquiring legal custody of children;

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

13 (i) improving the system that transfers custody to kinship
14 relatives;

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

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

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

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

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

28 ~~SECTION 3. 2. AND BE IT FURTHER ENACTED, That Section 2~~ this Act
29 shall take effect October 1, 2005. It shall remain in effect for 1 year and 4 months and,
30 at the end of January 31, 2007, with no further action required by the General
31 Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.

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

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

