
By: **Senators Gladden, Britt, Brochin, Forehand, Garagiola, Hollinger,
Kasemeyer, Kelley, Klausmeier, and Lawlah**

Introduced and read first time: February 4, 2005

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Children in Need of Assistance - Custody and Guardianship**

3 FOR the purpose of authorizing a juvenile court to grant custody and guardianship of
4 certain children to certain individuals; providing for the effect of an order
5 granting custody and guardianship; authorizing the court to order certain
6 reviews after granting custody and guardianship to an individual; requiring
7 certain considerations before the court grants custody and guardianship;
8 prohibiting the court from entering an order granting custody and guardianship
9 before a certain time; requiring the court to see a certain child in person before
10 the court concludes a permanency plan review hearing; making clarifying
11 changes; altering the purpose of the Court-Appointed Special Advocate
12 Program; altering the permanency plans that a local department of social
13 services is required to consider for a child in an out-of-home placement;
14 requiring the Social Services Administration to adopt certain regulations;
15 requiring certain individuals to obtain a criminal history records check; and
16 generally relating to custody and guardianship of certain children.

17 BY repealing and reenacting, without amendments,
18 Article - Courts and Judicial Proceedings
19 Section 3-819(b) and (c)
20 Annotated Code of Maryland
21 (2002 Replacement Volume and 2004 Supplement)

22 BY adding to
23 Article - Courts and Judicial Proceedings
24 Section 3-819.2
25 Annotated Code of Maryland
26 (2002 Replacement Volume and 2004 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article - Courts and Judicial Proceedings
29 Section 3-823(e) and (h)(1) and 3-830(b)
30 Annotated Code of Maryland

1 (2002 Replacement Volume and 2004 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Family Law

4 Section 5-525(e)(2) and (i) and 5-561(c)

5 Annotated Code of Maryland

6 (2004 Replacement Volume)

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

9 **Article - Courts and Judicial Proceedings**

10 3-819.

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

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

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

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

17 (ii) Commit the child ON TERMS THE COURT CONSIDERS
18 APPROPRIATE to the custody of:

19 1. A. A parent[.]; OR

20 B. SUBJECT TO § 3-819.2 OF THIS SUBTITLE, A relative, or
21 other individual [on terms the court considers appropriate]; or

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

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

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

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

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

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

6 3-819.2.

7 (A) SUBJECT TO SUBSECTION (E) OF THIS SECTION, THE COURT MAY GRANT
8 CUSTODY AND GUARDIANSHIP TO A RELATIVE OR A NONRELATIVE UNDER THIS
9 SUBTITLE.

10 (B) AN ORDER GRANTING CUSTODY AND GUARDIANSHIP TO AN INDIVIDUAL
11 UNDER THIS SECTION TERMINATES THE LOCAL DEPARTMENT'S LEGAL OBLIGATIONS
12 AND RESPONSIBILITIES TO THE CHILD.

13 (C) A GUARDIAN APPOINTED UNDER THIS SUBTITLE HAS LEGAL CUSTODY OF
14 THE CHILD UNLESS THE COURT THAT APPOINTS THE GUARDIAN GIVES LEGAL
15 CUSTODY TO ANOTHER PERSON.

16 (D) AFTER GRANTING CUSTODY AND GUARDIANSHIP TO AN INDIVIDUAL
17 UNDER THIS SECTION, THE COURT MAY ORDER ANY FURTHER REVIEWS THAT THE
18 COURT DETERMINES TO BE IN THE CHILD'S BEST INTERESTS, CONSISTENT WITH §
19 3-823(H)(1)(III) OF THIS SUBTITLE.

20 (E) BEFORE GRANTING CUSTODY AND GUARDIANSHIP UNDER THIS SECTION,
21 THE COURT SHALL CONSIDER:

22 (1) ANY ASSURANCE BY THE LOCAL DEPARTMENT THAT IT WILL
23 PROVIDE FUNDS FOR NECESSARY SUPPORT AND MAINTENANCE FOR THE CHILD;

24 (2) ALL FACTORS NECESSARY TO DETERMINE THE BEST INTERESTS OF
25 THE CHILD; AND

26 (3) (I) A REPORT BY A LOCAL DEPARTMENT OR A LICENSED CHILD
27 PLACEMENT AGENCY, COMPLETED IN COMPLIANCE WITH REGULATIONS ADOPTED
28 BY THE DEPARTMENT OF HUMAN RESOURCES, ON THE SUITABILITY OF THE
29 INDIVIDUAL TO BE THE GUARDIAN OF THE CHILD.

30 (II) THE REPORT SHALL INCLUDE A:

31 1. HOME STUDY;

32 2. CHILD PROTECTIVE SERVICES HISTORY;

33 3. CRIMINAL HISTORY RECORDS CHECK; AND

34 4. REVIEW OF THE PROPOSED GUARDIAN'S PHYSICAL AND
35 MENTAL HEALTH HISTORY.

1 (III) IF THE LOCAL DEPARTMENT HAS NOT PRODUCED THE REPORT
 2 DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH WITHIN 120 DAYS AFTER
 3 THE DATE THAT THE COURT ISSUED THE ORDER TO THE LOCAL DEPARTMENT TO
 4 PRODUCE THE REPORT, THE COURT SHALL:

- 5 1. HOLD AN IMMEDIATE HEARING TO DETERMINE THE
 6 CAUSES OF THE DELAY;
- 7 2. STATE ON THE RECORD THE DETERMINED CAUSES OF
 8 THE DELAY; AND
- 9 3. MAKE A DETERMINATION AS TO WHETHER THE
 10 PROGRESS OF THE LOCAL DEPARTMENT IS ACCEPTABLE.

11 (IV) FOLLOWING THE HEARING REQUIRED UNDER PARAGRAPH (III)
 12 OF THIS SUBSECTION, THE COURT SHALL:

- 13 1. GRANT THE DEPARTMENT AN EXTENSION OF NO MORE
 14 THAN 90 DAYS; OR
- 15 2. ORDER PRODUCTION OF THE REPORT BY A LICENSED
 16 CHILD PLACEMENT AGENCY, WITHIN A REASONABLE TIME AND ORDER THE LOCAL
 17 DEPARTMENT TO BEAR THE COST.

18 (F) A COURT MAY NOT ENTER AN ORDER GRANTING CUSTODY AND
 19 GUARDIANSHIP UNDER THIS SECTION UNTIL THE REPORT UNDER SUBSECTION (E)(3)
 20 OF THIS SECTION IS SUBMITTED TO AND CONSIDERED BY THE COURT.

21 3-823.

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

- 23 (1) Determine the child's permanency plan, which may be:
- 24 (i) Reunification with the parent or guardian;
- 25 (ii) Placement with a relative for:
- 26 1. Adoption; or
- 27 2. Custody and guardianship UNDER § 3-819.2 OF THIS
 28 SUBTITLE;
- 29 (iii) Adoption by a nonrelative;
- 30 (iv) Guardianship by a nonrelative UNDER § 3-819.2 OF THIS
 31 SUBTITLE;
- 32 (v) Continuation in a specified placement on a permanent basis
 33 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 YEARS, determine the
5 services needed to assist the child to make the transition from placement to
6 independent living.

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

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

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

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

19 3. THE COURT MAY NOT CONCLUDE A REVIEW HEARING
20 UNDER SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH UNLESS THE COURT HAS
21 SEEN THE CHILD IN PERSON.

22 3-830.

23 (b) (1) There is a Court-Appointed Special Advocate Program.

24 (2) The purpose of the Program is to provide volunteers whose primary
25 purpose is to ensure [that children who are the subject of a CINA proceeding are
26 provided with] THE PROVISION OF appropriate service and case planning [that is in
27 their] CONSISTENT WITH THE best [interest] INTERESTS OF:

28 (I) A CHILD WHO IS THE SUBJECT OF A CINA PROCEEDING; OR

29 (II) A CHILD WHO IS THE SUBJECT OF A GUARDIANSHIP
30 PROCEEDING UNDER § 3-819.2 OF THIS SUBTITLE.

31 (3) The Administrative Office of the Courts:

32 (i) Shall administer the Program;

33 (ii) Shall report annually to the Chief Judge of the Court of Appeals
34 and, subject to § 2-1246 of the State Government Article, to the General Assembly
35 regarding the operation of the Program; and

1 (iii) May adopt rules governing the implementation and operation of
2 the Program including funding, training, selection, and supervision of volunteers.

3 **Article - Family Law**

4 5-525.

5 (e) (2) To the extent consistent with the best interests of the child in an
6 out-of-home placement, the local department shall consider the following
7 permanency plans, in descending order of priority:

8 (i) returning the child to the child's parent or guardian, unless the
9 department is the guardian;

10 (ii) placing the child with relatives to whom adoption[,] OR
11 CUSTODY AND guardianship, [or care and custody,] in descending order of priority,
12 are planned to be granted;

13 (iii) adoption in the following descending order of priority:

14 1. by a current foster parent with whom the child has resided
15 continually for at least the 12 months prior to developing the permanency plan or for
16 a sufficient length of time to have established positive relationships and family ties;
17 or

18 2. by another approved adoptive family;

19 (IV) PLACING THE CHILD IN ANOTHER PLANNED PERMANENT
20 LIVING ARRANGEMENT;

21 [(iv)] (V) placing the child [in a court approved permanent foster
22 home with a specific caregiver] WITH A NONRELATIVE GUARDIAN; OR

23 [(v)] (VI) [an independent living arrangement; or

24 (vi) long-term foster care] CONTINUATION IN A SPECIFIED
25 PLACEMENT ON A PERMANENT BASIS BECAUSE OF THE CHILD'S SPECIAL NEEDS OR
26 CIRCUMSTANCES.

27 (i) The Administration shall adopt regulations that:

28 (1) [for the 12-month period beginning on October 1, 1983, and for each
29 subsequent 12-month period, establish specific goals as to the maximum number of
30 children who will remain in foster care for more than 2 years] ESTABLISH GOALS AND
31 SPECIFY PERMANENCY PLANNING PROCEDURES THAT:

32 (I) MAXIMIZE THE PROSPECT FOR REDUCING LENGTH OF STAY IN
33 OUT-OF-HOME PLACEMENT IN THE BEST INTERESTS OF CHILDREN; AND

34 (II) IMPLEMENT THE INTENT OF THIS SECTION;

1 (2) prohibit a local department from seeking the custody or guardianship
2 of a child for placement in foster care solely because the child's parent or guardian
3 lacks shelter or solely because the child's parents are financially unable to provide
4 treatment or care for a child with a developmental disability or mental illness;

5 (3) specify the compelling reasons for placing a child in a local
6 jurisdiction other than the local jurisdiction where the child's parent or guardian
7 resides, under subsection (e)(3)(ii) of this section; [and]

8 (4) require the local department to make appropriate referrals to
9 emergency shelter and other services for families with children who lack shelter;

10 (5) ESTABLISH CRITERIA FOR INVESTIGATING AND APPROVING FOSTER
11 HOMES; AND

12 (6) FOR CASES IN WHICH THE PERMANENCY PLAN RECOMMENDED BY
13 THE LOCAL DEPARTMENT OR UNDER CONSIDERATION BY THE COURT INCLUDES
14 APPOINTMENT OF A GUARDIAN AND RESCISSION OF THE LOCAL DEPARTMENT'S
15 CUSTODY OR GUARDIANSHIP OF A CHILD:

16 (I) ESTABLISH CRITERIA FOR INVESTIGATING AND DETERMINING
17 THE SUITABILITY OF PROSPECTIVE RELATIVE OR NONRELATIVE GUARDIANS; AND

18 (II) REQUIRE THE FILING OF A REPORT WITH THE COURT AS
19 PROVIDED IN § 3-819.2 OF THE COURTS ARTICLE.

20 5-561.

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

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

25 (2) AN INDIVIDUAL WHO IS SEEKING TO BECOME A GUARDIAN
26 THROUGH A LOCAL DEPARTMENT OF SOCIAL SERVICES;

27 (3) AN INDIVIDUAL WHOM THE JUVENILE COURT APPOINTS AS A
28 GUARDIAN OF A CHILD;

29 [(2)] (4) an adult relative with whom a child, committed to a local
30 department of social services, is placed by the local department of social services;

31 [(3)] (5) any adult known by a local department of social services to be
32 residing in a:

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

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

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

6 (iv) home of an individual seeking to adopt a child through a local
7 department of social services or a licensed child placement agency; and

8 [(4)] (6) if requested by a local department of social services:

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

12 (ii) any adult known by the local department to be residing in the
13 home of the parent or guardian.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2005.