
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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2005

CHAPTER _____

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

1 Annotated Code of Maryland
2 (2002 Replacement Volume and 2004 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Courts and Judicial Proceedings
5 Section 3-823(e) and (h)(1) and 3-830(b)
6 Annotated Code of Maryland
7 (2002 Replacement Volume and 2004 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article - Family Law
10 Section 5-525(e)(2) and (i) and 5-561(c)
11 Annotated Code of Maryland
12 (2004 Replacement Volume)

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

15 **Article - Courts and Judicial Proceedings**

16 3-819.

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

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

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

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

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

25 1. A. A parent[,]; OR

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

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

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

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

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

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

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

12 3-819.2.

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

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

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

22 (D) AFTER GRANTING CUSTODY AND GUARDIANSHIP TO AN INDIVIDUAL
23 UNDER THIS SECTION, THE COURT MAY ORDER ANY FURTHER REVIEWS THAT THE
24 COURT DETERMINES TO BE IN THE CHILD'S BEST INTERESTS, CONSISTENT WITH §
25 3-823(H)(1)(III) OF THIS SUBTITLE.

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

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

30 (2) ALL FACTORS NECESSARY TO DETERMINE THE BEST INTERESTS OF
31 THE CHILD; AND

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

36 (II) THE REPORT SHALL INCLUDE A:

- 1 1. HOME STUDY;
- 2 2. CHILD PROTECTIVE SERVICES HISTORY;
- 3 3. CRIMINAL HISTORY RECORDS CHECK; AND
- 4 4. REVIEW OF THE PROPOSED GUARDIAN'S PHYSICAL AND
- 5 MENTAL HEALTH HISTORY.

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

- 10 1. HOLD AN IMMEDIATE HEARING TO DETERMINE THE
- 11 CAUSES OF THE DELAY;
- 12 2. STATE ON THE RECORD THE DETERMINED CAUSES OF
- 13 THE DELAY; AND
- 14 3. MAKE A DETERMINATION AS TO WHETHER THE
- 15 PROGRESS OF THE LOCAL DEPARTMENT IS ACCEPTABLE.

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

- 18 1. GRANT THE DEPARTMENT AN EXTENSION OF NO MORE
- 19 THAN 90 DAYS; OR
- 20 2. ORDER PRODUCTION OF THE REPORT BY A LICENSED
- 21 CHILD PLACEMENT AGENCY, WITHIN A REASONABLE TIME AND ORDER THE LOCAL
- 22 DEPARTMENT TO BEAR THE COST.

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

26 3-823.

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

- 28 (1) Determine the child's permanency plan, which may be:
 - 29 (i) Reunification with the parent or guardian;
 - 30 (ii) Placement with a relative for:
 - 31 1. Adoption; or
 - 32 2. Custody and guardianship UNDER § 3-819.2 OF THIS
 - 33 SUBTITLE;

1 (iii) Adoption by a nonrelative;

2 (iv) Guardianship by a nonrelative UNDER § 3-819.2 OF THIS
3 SUBTITLE;

4 (v) Continuation in a specified placement on a permanent basis
5 because of the child's special needs or circumstances;

6 (vi) Continuation in placement for a specified period because of the
7 child's special needs or circumstances; or

8 (vii) Independent living; and

9 (2) For a child who has attained the age of 16 YEARS, determine the
10 services needed to assist the child to make the transition from placement to
11 independent living.

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

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

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

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

24 3. THE COURT MAY NOT CONCLUDE A REVIEW HEARING
25 UNDER SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH UNLESS THE COURT HAS
26 SEEN THE CHILD IN PERSON.

27 3-830.

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

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

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

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

- 1 (3) The Administrative Office of the Courts:
- 2 (i) Shall administer the Program;
- 3 (ii) Shall report annually to the Chief Judge of the Court of Appeals
4 and, subject to § 2-1246 of the State Government Article, to the General Assembly
5 regarding the operation of the Program; and
- 6 (iii) May adopt rules governing the implementation and operation of
7 the Program including funding, training, selection, and supervision of volunteers.

8 **Article - Family Law**

9 5-525.

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

- 13 (i) returning the child to the child's parent or guardian, unless the
14 LOCAL department is the guardian;
- 15 (ii) placing the child with relatives to whom adoption~~, or~~
16 CUSTODY AND guardianship, ~~for care and custody,~~ in descending order of priority,
17 are planned to be granted;
- 18 (iii) adoption in the following descending order of priority:

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

23 2. by another approved adoptive family;

24 (IV) PLACING THE CHILD IN ANOTHER PLANNED PERMANENT
25 LIVING ARRANGEMENT; ~~THAT:~~

26 1. ADDRESSES THE INDIVIDUALIZED NEEDS OF THE CHILD,
27 INCLUDING THE CHILD'S EDUCATIONAL PLAN, EMOTIONAL STABILITY, PHYSICAL
28 PLACEMENT, AND SOCIALIZATION NEEDS; AND

29 2. INCLUDES GOALS THAT PROMOTE THE CONTINUITY OF
30 RELATIONS WITH INDIVIDUALS WHO WILL FILL A LASTING AND SIGNIFICANT ROLE
31 IN THE CHILD'S LIFE.

32 ~~{(iv)}~~ (V) placing the child ~~[in a court approved permanent foster~~
33 ~~home with a specific caregiver]~~ WITH A NONRELATIVE GUARDIAN; OR

34 ~~{(v)}~~ (VI) ~~[an independent living arrangement; or~~

1 ~~(vi) long term foster care]~~ CONTINUATION IN A SPECIFIED
2 ~~PLACEMENT ON A PERMANENT BASIS BECAUSE OF THE CHILD'S SPECIAL NEEDS OR~~
3 ~~CIRCUMSTANCES.~~

4 (i) The Administration shall adopt regulations that:

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

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

11 (II) IMPLEMENT THE INTENT OF THIS SECTION;

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

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

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

21 (5) ESTABLISH CRITERIA FOR INVESTIGATING AND APPROVING FOSTER
22 HOMES; AND

23 (6) FOR CASES IN WHICH THE PERMANENCY PLAN RECOMMENDED BY
24 THE LOCAL DEPARTMENT OR UNDER CONSIDERATION BY THE COURT INCLUDES
25 APPOINTMENT OF A GUARDIAN AND RESCISSION OF THE LOCAL DEPARTMENT'S
26 CUSTODY OR GUARDIANSHIP OF A CHILD:

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

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

31 5-561.

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

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

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

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

5 [(2)] (4) an adult relative with whom a child, committed to a local
6 department of social services, is placed by the local department of social services;

7 [(3)] (5) any adult known by a local department of social services to be
8 residing in a:

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

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

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

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

18 (V) HOME OF AN INDIVIDUAL SEEKING TO BECOME A GUARDIAN
19 THROUGH A LOCAL DEPARTMENT OF SOCIAL SERVICES; AND

20 [(4)] (6) if requested by a local department of social services:

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

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

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