

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 710 (Chairman, Judicial Proceedings Committee and Senator Giannetti)
 (Maryland Judicial Conference)

Judicial Proceedings

Judiciary

Permanency for Families and Children Act of 2005

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

The bill is effective January 1, 2006.

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 the Public Defender (OPD) to represent parents in adoption proceedings. Potential significant general fund expenditure increase for the Department of Health and Mental Hygiene (DHMH) to provide plans for clinically appropriate treatment services that may be ordered by a juvenile court. 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 \$46,100 in FY 2006 for notification by clerks of the court, one additional position, and related costs to process information for the DHR web site. Out-years reflect annualization and inflation.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	46,100	54,700	52,500	55,600	59,000
Net Effect	(\$46,100)	(\$54,700)	(\$52,500)	(\$55,600)	(\$59,000)

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:

- guardianship to and adoption through local departments of social services;
- private agency guardianship and adoption; and
- independent adoption.

The bill's provisions do not apply to cases pending on or before December 31, 2005.

Guardianship to and Adoption through Local Departments of Social Services

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 between birth parents and adoptive parents. The bill authorizes the court to assign costs, including genetic testing costs and counsel fees as the court considers appropriate, but the economic situations of the parties must be considered. 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 a 30-day time limit for a parent who has consented to guardianship to revoke his or her consent. The 30-day time period is altered to run after the parent signs the consent, or after the consent is filed as required, whichever is later. However, consent to guardianship that is entered into before a judge on the record must include a waiver of the revocation period. 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 requires publication of adequate notice on the web site of DHR, in addition to the current law requirement for publication in a general circulation newspaper. 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 bill specifies that the condition that may be imposed is limited to family placement only. 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 a local department.

Private Agency Guardianship and Adoption

The bill retains the current law standard of a 30-day revocation period. However, the bill also specifies that a parent may not revoke consent if the child is at least 30 days old and the consent is given before a judge on the record, or if in the preceding year, the parent has filed a notice of objection or revoked consent to guardianship of the child. The bill

specifies that the court has the authority to enforce post-adoption contact agreements. The bill authorizes conditional consent by the birth parents to adoption, which may only specify 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.

Independent Adoption

The bill specifies the requirements for adequate notice to unknown parents or parents who have not been located and requires the publication of notice of adoption proceedings on the DHR web site for 30 days. The bill retains the current law revocation period of 30 days, but provides that the parent may not revoke consent if the child is at least 30 days old and consent is given before a judge on the record or the parent revoked consent or filed a notice of objection to adoption of the child in the preceding year. 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 and their enforceability are not addressed. 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, 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 \$2,599 in fiscal 2006, accounting for the bill's October 1, 2005 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 1,545 and five notices would be provided in guardianship cases and two notices would be provided in adoption cases. Out-years include annualization and inflation.

Office of the 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. The current law requirement for OPD to represent indigent defendants in custody, interrogation, preliminary hearing, arraignment, trial, and appeal is clarified to be limited to criminal proceedings under this bill.

The bill requires OPD to provide representation for parents during a hearing in connection with guardianship or adoption prior to TPR. Under provisions governing

CINAs, local department guardianships, or adoptions prior to TPR, OPD must represent eligible parents in hearings connected with: guardianship, disrupted adoption, adoption, or an appeal until final disposition. Because this bill provides for adoptions prior to the termination of parental rights, parents would retain standing during an adoption process. Because an adoption could take place prior to an official termination of parental rights, OPD could 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 fiscal 2004, there were 674 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. Parents that initially consented to an adoption 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 Health and Mental Hygiene

There could be a potentially significant increase in general fund expenditures for DHMH to provide the services that may be required by this bill.

The bill authorizes a juvenile court to co-commit a child who is the subject of a guardianship petition to the custody of DHMH, as well as to a local department of social services. DHMH may then be ordered to provide a plan of clinically appropriate treatment services for the child in the least restrictive setting that conforms to State and federal law. The order for co-commitment could affect the Administrations of Medical Care Programs, Mental Hygiene, and Developmental Disabilities. DHMH advises that while some services may already be provided to these children if they are Medicaid-eligible and the services are considered medically necessary, there is still likely to be a significant fiscal impact, affecting the Developmental Disabilities Administration (DDA) to the greatest degree.

According to the Judiciary, 895 guardianship petitions were filed in circuit courts in fiscal 2004. DHR advises that as many as 250 children annually could be co-committed to DHMH under the provisions of this bill. However, the Department of Legislative Services advises that because the juvenile court only has discretion to co-commit children to DHMH and is not mandated to do so, there is insufficient data to estimate accurately how many children a juvenile court may decide to order into a co-custody arrangement with DHMH for services. Also, the bill requires that DHMH provide a plan for clinically appropriate treatment, but does not specifically require that DHMH implement the plan. If DHMH provided a plan for treatment services only, that could substantially mitigate

the additional costs of this bill. *However, by way of illustration,* general fund expenditures for DHMH could increase by \$10 million annually if a juvenile court co-committed 125 children to the custody of DDA annually, DDA was ordered to provide a clinically appropriate treatment plan for each child, and DDA was ordered to implement each plan.

Department of Human Resources

General fund expenditures could increase by \$43,519 in fiscal 2006, which accounts for the bill's October 1, 2005 effective date. The estimate reflects 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 authorizes the court to assign costs including testing and attorney's fees as appropriate, with consideration given to the economic situation of the parties. Because the bill does not specifically require the local department to pay the costs associated with the genetic testing that may be required in guardianship cases, it is assumed that the local departments would be able to pay for any genetic testing that may be ordered by courts within existing resources.

Salaries and Fringe Benefits	\$32,170
Brochures and Flyers	5,100
Other Operating Expenses	<u>8,049</u>
Total FY 2006 DHR Expenditures	\$45,319

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

It is also possible that general fund expenditures could increase minimally for DHR 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. Local governments could experience a minimal increase in expenditures as the bill requires publication of TPR and guardianship petitions on the DHR web site and the newspaper.

Additional Information

Prior Introductions: This bill is a reintroduction of SB 697/HB882 of the 2004 session. SB 697 received an unfavorable report from the Judicial Proceedings Committee and HB 882 received an unfavorable report from the Judiciary Committee.

Cross File: HB 826 (Chairman, Judiciary Committee, *et al.*) (Maryland Judicial Conference) – Judiciary.

Information Source(s): Department of Juvenile Services, Department of Human Resources, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2005
mp/jr Revised - Senate Third Reader - April 1, 2005
Revised - Enrolled Bill - May 3, 2005

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