

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 771

(Chairman, Judiciary Committee)

(By Request – Departmental – Human Resources)

Judiciary

Judicial Proceedings

Children in Out-of-Home Placements - Permanency Plans

This departmental bill alters the options that may be considered by a local department of social services in developing a permanency plan for a child in an out-of-home placement and alters the options that may be included in a court-ordered permanency plan.

Fiscal Summary

State Effect: The bill's requirements could be met with existing resources. Enactment of the bill may help prevent the loss of federal foster care matching funds provided under Title IV-E of the Social Security Act and the Adoption and Safe Families Act (ASFA).

Local Effect: The bill's requirements could be met with existing resources.

Small Business Effect: The Department of Human Resources (DHR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. The attached assessment does not reflect amendments to the bill.

Analysis

Bill Summary: The bill repeals provisions that authorize a court to consider, as a permanency plan for a child in an out-of-home placement, continuation in a specified placement on a permanent basis due to a child's special needs or circumstances, continuation in placement for a specified period due to a child's special needs or circumstances, or independent living. Instead, the bill provides that the permanency plan

may be, as a fifth priority, another planned permanent living arrangement that: (1) addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and (2) includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life. The court may not order a child to be continued in another planned permanent living arrangement, however, unless the court finds that the person or agency to which the child is committed has documented a compelling reason for deciding that it would not be in the best interest of the child to return home, be referred for a Termination of Parental Rights (TPR) proceeding, or be placed in adoption or guardianship.

The bill repeals provisions that require a local department of social services to consider, as a child's permanency plan, placement of a child in a court-approved permanent foster home, an independent living arrangement, or long-term foster care. Instead, as a fourth priority for a permanency plan, a local department of social services must consider another planned permanent living arrangement that: (1) addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and (2) includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life.

Current Law: A court must hold a permanency planning hearing to determine the permanency plan for a committed child no later than 11 months after a child in a CINA proceeding or continued in a voluntary placement enters an out-of-home placement; or within 30 days after the court finds that reasonable efforts to reunify a child with a parent or guardian are not required based on a finding that abuse, torture, or a crime of violence occurred.

A child is considered to be in an out-of-home placement 30 days after a child is placed in an out-of-home placement. If all parties agree, a permanency plan hearing may be held the same day as the reasonable efforts hearing.

At a permanency hearing, the court must determine the child's permanency plan, which may be (1) reunification; (2) placement with a relative for adoption or custody and guardianship; (3) adoption by a nonrelative; (4) guardianship by a nonrelative; (5) continuation in a specified placement on a permanent basis due to the child's special needs or circumstances; (6) continuation in placement for a specified period due to the child's special needs or circumstances; or (7) independent living. If the child is 16, the court must determine the services needed to help the child make the transition from placement to independent living.

The court may not order a child to be continued in a placement for a certain period, or on a permanent basis, due to the child's special needs or circumstances unless the court finds the agency or person to which the child is committed has documented a compelling reason showing that it would not be in the best interest of the child to return home, be referred for TPR, or be placed for adoption or guardianship.

The Social Services Administration must establish an out-of-home placement for minor children who are: (1) placed in a local department of social services' custody for not more than 180 days by a parent or legal guardian under a voluntary placement agreement; (2) abused, abandoned, neglected, or dependent, if a juvenile court determines continued residence in the child's home is contrary to the child's welfare and commits the child to the local department's custody or guardianship; or (3) placed in an out-of-home placement by a local department under a voluntary placement agreement.

A local department of social services may not seek legal custody of a child under a voluntary placement agreement if the child has a developmental disability or a mental illness and the placement's purpose is to obtain treatment or care related to the child's disability the parent cannot provide. This child may remain in an out-of-home placement under a voluntary agreement for more than 180 days if the disability necessitates care or treatment and a juvenile court makes a finding that placement continuation is in the child's best interests.

In developing a permanency plan for a child in an out-of-home placement, the local department of social services must give primary consideration to the child's best interests. The local department must consider: (1) the child's safety and health in the parent's home; (2) the child's attachment and emotional ties to natural parents and siblings; (3) the child's emotional attachment to the current caregiver and caregiver's family; (4) the length of time the child lived with the current caregiver; and (5) the potential harm if the child remains in State custody for an excessive period of time.

To the extent consistent with the child's best interests, the local department must consider the following permanency plans, in descending order of priority:

- returning the child to the parent or guardian, unless DHR is the guardian;
- placing the child with relatives to whom adoption, guardianship, or care and custody are planned to be granted;
- adoption in the following descending order of priority: (1) by a current foster parent with whom the child has resided with a sufficient time as specified in statute; or (2) by another approved family;

- placing the child in a court-approved permanent foster home with a specific caregiver;
- an independent living arrangement; or
- long-term foster care.

Background: According to DHR, the intent of this bill is to amend the permanency plan hierarchy for the State and conform it to federal standards. Maryland's current hierarchy of permanency plans, in order of application, is set forth above. With the inception of ASFA, the federal government changed the acceptable plans of permanency for a foster child. Independent living, permanent foster care, and long-term foster care were eliminated. None of these plans, in the view of the federal government, provided "permanency" for a child. The plan of independent living was further affected by the Chaffee Independent Living Act, which declared that independent living was not a permanency plan, but a group of services for the child in foster care.

While enactment of ASFA limited the set permanency plans to three, an allowance was made for a child whose permanency needs could not be met by the three options that is called "Another Planned Permanent Living Arrangement" or APPLA. This plan allows for a customized permanency plan for a child when all other permanency plans have been attempted and ruled out.

Foster care is a federally based program, which must adhere to federal laws and conditions, the largest of which are ASFA and Title IV-E of the Social Security Act. ASFA is the governing law for the foster care program regarding permanency and service delivery, while Title IV-E provides federal reimbursement to the State for service costs. In the most recent Child and Family Services Review, Maryland was cited for the number of children with permanency plans of long-term foster care when the federal government has eliminated that plan as an option.

State Fiscal Effect: In fiscal 2005, DHR expects to receive \$73.3 million in Title IV-E federal funding for administration of the State foster care program. The total fiscal 2005 appropriation for State foster care is \$254.2 million. For fiscal 2006, the total allowance for the foster care program is \$302.3 million, of which \$74.5 million is anticipated to be Title IV-E federal funding. Enactment of this bill may help prevent loss of federal foster care matching funds.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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