

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 976
 Judiciary

(Delegates Doory and Rosenberg)

Judicial Proceedings

Children in Need of Assistance - Custody and Guardianship

This bill authorizes a court to grant custody and guardianship of a Child in Need of Assistance (CINA) to a relative or nonrelative and provides that the award of custody and guardianship terminates the responsibilities of the local department of social services to the child. However, the court may not grant the guardianship until it considers a report by a local department or child placement agency on the suitability of the prospective guardian. The bill expands the jurisdiction of the Court Appointed Special Advocate (CASA) Program to children who are the subject of these guardianship proceedings and alters the priority list of a permanency plan that a local department must consider for a child in an out-of-home placement.

Fiscal Summary

State Effect: General fund expenditures for the Department of Human Resources (DHR) increase \$167,300 in FY 2006 for additional staff to conduct home studies of prospective guardians required by the bill. Out-years include annualization and inflation. The Judiciary and the Department of Public Safety and Correctional Services should be able to handle the bill's requirements with existing resources.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	167,300	207,600	217,300	227,800	239,000
Net Effect	(\$167,300)	(\$207,600)	(\$217,300)	(\$227,800)	(\$239,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential significant increase in expenditures to pay for suitability reports by local departments of social services. Minimal increases in expenditures to gather additional information for home studies of guardians required by the bill.

Small Business Effect: None.

Analysis

Bill Summary: This bill authorizes a juvenile court to grant custody and guardianship of a CINA to a relative or nonrelative. An order granting custody and guardianship terminates the local department's legal obligations and responsibilities to the child. A guardian appointed in such a proceeding has legal custody of the child unless the court gives legal custody to another person. Before granting custody and guardianship, the court must consider the following:

- any assurance by the local department that it will provide funds for the necessary support and maintenance of the child;
- all factors necessary to determine the child's best interests; and
- a report by a local department or licensed child placement agency on the suitability of the individual to be the child's guardian, in accordance with regulations adopted by DHR.

The suitability report must include a home study, child protective services history, criminal history records checks, and review of the proposed guardian's physical and mental history. A criminal history background check is required of an individual who is appointed or who has applied to become a guardian and any known adult in the home of an individual who has applied to become a guardian. If the local department has not produced the report within 120 days after being ordered to do so, the court must hold a hearing, and state the cause of the delay on the record. Then the court must determine whether to grant an extension of no more than 90 days to the local department or order production of the report by a licensed placement agency within a reasonable time and require the local department to pay the cost. The court may not enter an order granting custody and guardianship until the required suitability report is submitted to and considered by the court.

After granting custody and guardianship to a relative or other individual, the court may order any further reviews that the court determines to be in the child's best interests. If the court finds good cause not to terminate the child's case, the court must conduct permanency plan review hearings every 12 months. The court may not conclude a review hearing unless the court has seen the child in person. The bill also extends the purview of CASA program services to a child who is the subject of the guardianship proceeding under the bill.

To the extent consistent with the best interests of a child in an out-of-home placement, the local department must consider specified permanency plans in descending order of priority. The second priority is altered to include placing the child with relatives to whom custody and guardianship are planned to be granted. As a fourth priority, the local department must consider another permanent living arrangement that addresses the child's individualized needs and specified goals.

The Social Services Administration (SSA) must adopt regulations that establish goals and specify permanency planning procedures that maximize the chances for reducing the length of stay in an out-of-home placement that is in the best interests of children, and implement the legislative intent of the bill's provisions. In addition to other requirements, SSA must adopt regulations that establish criteria for investigating and approving foster homes. In cases in which the permanency plan recommended by the local department, or under consideration by the court, includes a grant of guardianship and termination of the local department's custody or guardianship, SSA must:

- establish criteria for investigating and determining the suitability of a prospective relative or nonrelative guardian; and
- require the filing of a suitability report on the prospective guardian with the court.

Current Law: "Guardianship" means an award by a court of the authority to make ordinary and emergency decisions about a child's care, welfare, education, physical and mental health, and the right to pursue support.

In making a disposition of a CINA petition, the court must:

- find that the child is not CINA and, except as otherwise provided, dismiss the case; or
- find that the child is CINA and not change the child's custody status; or
 - commit the child to the custody of a parent, relative, or other appropriate individual; or
 - commit the child to a local department of social services, the Department of Health and Mental Hygiene, or both, as appropriate, including designation of the type of facility where the child is to be placed.

In addition to these actions, the court may place a child under the protective supervision of a local department as appropriate; grant limited guardianship for specified purposes; order participation in rehabilitative services; or the court may determine custody, visitation, support, or paternity of a child, as specified in statute.

At a permanency plan hearing, the court must determine the child's permanency plan. This plan may be: (1) reunification with the child's parent or guardian; (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 a placement for a specified period due to the child's special needs or circumstances; or (7) independent living. For a child who is 16 years old, the court must determine the services needed to assist the child to make transition from placement to independent living. The court must conduct a permanency plan review hearing at specified intervals until a CINA commitment is rescinded or a voluntary placement is terminated.

The purpose of the CASA program is to provide volunteers whose function is to ensure that children who are the subject of a CINA proceeding are provided with appropriate service and case planning that is in their best interests. The Administrative Office of the Courts must administer the program and report on it annually. The Administrative Office of the Courts may adopt rules governing CASA program implementation and operation.

A local department of social services must give primary consideration to the best interests of the child in developing a permanency plan for a child in an out-of-home placement. The local department must consider factors as specified in statute to determine whether the permanency plan is in the best interests of the child. The local department must consider different permanency plans in the priority specified in statute. SSA must adopt regulations that for the 12-month period beginning October 1, 1983 and for each subsequent 12-month period, establish specific goals as to the maximum number of children who will remain in foster care for more than two years. SSA must also adopt regulations that prohibit a local department from seeking custody of a child under specified circumstances and require the local department to make appropriate referrals to emergency shelter and referrals for other services for families with children who lack shelter.

Background: This bill is intended to prevent future cases like that of Ciara Jobes, a 15-year old who suffered starvation, imprisonment, sexual, and physical abuse and was found dead in a Baltimore apartment in December 2002. Her court-appointed guardian, Satrina Roberts, was convicted of her murder and recently sentenced to 40 years imprisonment. According to *The Baltimore Sun*, Roberts, who was mentally ill, abandoned an application to become Ciara's foster parent and instead "found a way to circumvent Social Services and the foster care procedure" by seeking to be Ciara's guardian.

State and Local Expenditures:

Judiciary: The additional factors that courts must consider to grant custody and guardianship could be handled within the existing resources of the Judiciary. A potential impact could occur if the local department does not produce a timely suitability report and the court is required to hold a hearing to investigate the failure to comply. However, because it is likely that a review hearing would already be scheduled in the case, the courts could manage by having the hearing on the suitability report replace the scheduled review hearing. Accordingly, the Judiciary should be able to meet the bill's requirements with existing resources. The Family Services Division in the Administrative Office of the Courts provides funding for family adjudication functions in the circuit courts. The circuit courts have jurisdiction over guardianship and custody cases.

Public Safety and Correctional Services: The bill requires a criminal history records check for each custody/guardian applicant. In Maryland, the total maximum cost of each criminal history records check is \$52, which includes State and national background checks plus fingerprinting. The Criminal Justice Information System (CJIS) Central Repository is authorized by law to collect an \$18 fee established for Maryland criminal history checks. This fee represents cost recovery for processing and administration and is revenue/cost neutral. The Federal Bureau of Investigation (FBI) charges a fee of \$24 for a national criminal history records check. There is also normally a \$10 fee for two fingerprint cards (\$5 for the State card; \$5 for the separate FBI card). The CJIS Central Repository must collect the fees from the applicant, or other payer, and reimburse the FBI through that agency's monthly billing.

The CJIS Central Repository guidelines provide that for every 20,000 cumulative criminal history records checks, one additional position and one additional fingerprint workstation would be needed. DHR estimates that 444 cases would be processed annually. If there were two guardian applicants for each case, then 888 records checks would be required. This bill alone would not require additional resources. Accordingly, this bill's requirements can be met with existing resources.

Department of Human Resources: General fund expenditures could increase by an estimated \$167,303 in fiscal 2006, accounting for the October 1, 2005 effective date of the bill. This estimate reflects the cost of hiring three family services caseworkers to perform the home studies required by this bill. The estimate includes salaries, fringe benefits, and one-time equipment costs for the three positions. The assumptions used in calculating the estimate are stated below:

- DHR advises that the additional staff would be needed to complete home studies for 444 new cases annually;

- based on staffing ratios developed by the Child Welfare League of America, one full-time staff person can complete 14 home studies per month;
- DHR would also need outside consultants to complete health and fire inspections for each of the 444 cases, at a cost of \$41,625 in fiscal 2006; and
- the costs for required criminal history background checks would be borne by guardian applicants as the bill does not require DHR to pay for the background checks.

Salaries and Fringe Benefits	\$106,085
Health and Fire Inspections	41,625
Other Operating Expenses	<u>19,593</u>
Total FY 2006 State Expenditures	\$167,303

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

Additional Information

Prior Introductions: This bill is substantially similar to SB 693 of the 2004 session. SB 693 passed the Senate and was heard in the Judiciary Committee, but received no further action.

Cross File: SB 746 (Senator Gladden, *et al.*) – Judicial Proceedings.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Office of the Public Defender, *The Baltimore Sun*, *The Washington Post*, Department of Legislative Services

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